

**TELECOMMUNICATIONS POLICY REVIEW:  
A VIEW FROM INDUSTRY**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED EIGHTH CONGRESS**

**SECOND SESSION**

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**MAY 12, 2004**

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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## CONTENTS

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Hearing held on May 12, 2004 .....	Page 1
Statement of Senator Allen .....	3
Statement of Senator Breaux .....	40
Statement of Senator Cantwell .....	49
Statement of Senator Ensign .....	37
Statement of Senator Lautenberg .....	2
Statement of Senator Lott .....	42
Statement of Senator McCain .....	1
Prepared statement .....	1
Statement of Senator Nelson .....	2
Statement of Senator Sununu .....	44

### WITNESSES

Betty, Charles “Garry”, President and Chief Executive Officer, EarthLink, Inc. ....	17
Prepared statement .....	19
Ford, Scott, President and Chief Executive Officer, ALLTEL Corporation .....	12
Prepared statement .....	15
Roberts, Brian L., President and Chief Executive Officer, Comcast Corporation .....	8
Prepared statement .....	10
Seidenberg, Hon. Ivan, Chairman and Chief Executive Officer, Verizon .....	3
Prepared statement .....	5
Wilson, Delbert, Central Texas Telephone Cooperative on behalf of the National Telecommunications Cooperative Association .....	22
Prepared statement .....	23

### APPENDIX

Letter dated May 18, 2004 to Hon. John McCain from Delbert Wilson, Central Texas Telephone Cooperative, Inc. ....	57
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## **TELECOMMUNICATIONS POLICY REVIEW: A VIEW FROM INDUSTRY**

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**WEDNESDAY, MAY 12, 2004**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:32 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman, presiding.

### **OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA**

The CHAIRMAN. Good morning. Today we continue our series of hearings reviewing telecommunications policy. I will be brief so that we can hear from our witnesses. In previous hearings we took a look back at the Telecommunications Act of 1996 to identify the successes and failures of that law and looked forward to consider potential reforms to our telecommunications policy, given advances in technology.

Today we will hear the perspectives of leading corporations in each of various industry sectors regarding the elements that should be considered in any legislation seeking to reform existing telecommunications law. I thank the witnesses for being here today and I look forward to their testimony.

Our witnesses are: Mr. Ivan Seidenberg, who is the Chairman and Chief Executive Officer of Verizon; Mr. Brian Roberts, President and Chief Executive Officer of Comcast Corporation; Mr. Scott Ford, President and Chief Executive Officer of ALLTEL; Mr. Garry Betty, President and Chief Executive Officer of EarthLink; and Mr. Delbert Wilson, former Chief Executive Officer, Central Texas Telephone Cooperative.

[The prepared statement of Senator McCain follows:]

#### **PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA**

Today we continue our series of hearings reviewing telecommunications policy. I will be brief so that we can hear from our witnesses. In previous hearings, we took a look back at the Telecommunications Act of 1996 to identify the successes and failures of that law, and a look forward to consider potential reforms to our telecommunications policy given advances in technology. Today, we will hear the perspectives of leading companies in each of various industry sectors regarding the elements that should be considered in any legislation seeking to reform existing telecommunications law. I thank the witnesses for being here today and I look forward to your testimony.

The CHAIRMAN. Frank, would you like to make an opening statement?

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. My statement will be short, Mr. Chairman. I appreciate the opportunity to just say a few words. Again, my appreciation for holding this hearing, this third in the series, to review the implementation and the effects of the Telecommunications Act of 1996.

The 1996 Telecom Act, as it is called, ushered in what we thought would be, and what proves to be partially so, the most extensive change in U.S. communications law in the 62 years since the Communications Act of 1934. I believe that we should view the 1996 Act as part of an ongoing effort to protect consumers from potential domination by one telecommunications company or by several regional companies with monopoly power and to encourage innovation and investment in the industry.

The best way to accomplish these goals is to facilitate a marketplace where all service providers can compete for the consumers on a relatively—and I use the term advisedly—even playing field. The tough part is creating the even playing field. Now, I am sure today we are going to hear from some witnesses who will argue that the cable industry is the biggest beneficiary of Congress's effort to deregulate the communications, telecommunications industry. The oft-quoted figure is that since 1996 the cable industry has been able to raise and invest over \$75 billion on facility upgrades that allow operators to provide consumers with a wealth of new services, including digital cable, video on demand, cable modem service, and cable telephony.

The witnesses for the telephone companies I am sure are going to point to cable's successes—I do not know whether they are going to do it admiringly or otherwise, or enviously, but—point to cable's successes and say that phone companies should also be free from the regulatory burden. But I think it is important to remember that the Bell telephone companies, unlike cable, enjoyed a regulated monopoly status for so many years and they were able to negotiate a guaranteed return on their investment.

I am sure today's witnesses, particularly Mr. Seidenberg and Mr. Roberts, who operate the biggest telephone and cable companies in New Jersey, will help clarify some of the implementation issues that we need to address as we revisit the 1996 Act.

I thank you, Mr. Chairman.

The CHAIRMAN. Would Senator Allen or Senator Nelson want to make brief opening comments?

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Very brief, just to say that I am interested in hearing our witnesses' thoughts about the strengths and weaknesses of the Nation's telecom policies, looking forward to it.

The CHAIRMAN. Thank you, Senator Nelson.  
Senator Allen.

**STATEMENT OF HON. GEORGE ALLEN,  
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Mr. Chairman, I would like to submit my statement for the record—

The CHAIRMAN. Without objection.

Senator ALLEN.—with a brief statement that, first of all commending you for having this hearing, which is very timely. The 1996 Act was certainly of value, but I think the greatest value has been all the advancements in technology, and we in my view ought to be doing everything that we can to remove burdens on the deployment of broadband, which is going to provide so many more opportunities, not just telephone lines and cable lines, but satellite, Wi-Fi, wireless, even power lines.

With your help, Mr. Chairman, just a little over a week ago we did the right thing on preventing taxation of broadband, which certainly will provide all the new applications to get out there and provide people with the opportunities in commerce and education and access to information.

We have, obviously, key stakeholders here today. I look forward to hearing their testimony as we determine how to, in my view, embrace the power of technology to operate in a free market rather than arcane government regulations that are stagnant, out of touch, or inflexible. To the extent that we can look at ways to encourage the infrastructure deployment and compelling applications for our Nation, I want us to be one of the leaders of the digital information age, and look forward to where we can examine the 1996 Act and improve it, update it, and make it better for consumers.

Thank you, Mr. Chairman.

The CHAIRMAN. I again want to thank a very illustrious and successful panel here today, or mostly successful panel today. We will begin with you, Mr. Seidenberg. Thank you for appearing before the Committee again.

**STATEMENT OF HON. IVAN SEIDENBERG, CHAIRMAN  
AND CHIEF EXECUTIVE OFFICER, VERIZON**

Mr. SEIDENBERG. Thank you, Mr. Chairman. Thank you very much, members of the Committee. It is indeed a pleasure to be with you this morning and share our views on industry and our company in general.

As you know, in our written testimony we laid out a lot of detail about the shifts that is occurring in our industry, all of the technological changes. The bottom line to us is that consumers today have more choices in which to provide services, telecom services, particularly over wireless, cable, and telecom networks.

The other key point is, with the emergence of the Internet over the past several years, all these networks can be interconnected using IP protocols and packet switching protocols, which in effect tear down the silos that used to exist between cable, telephone, wireless, and other types of networks, radio networks for example. For example, today you can see you can have area codes that are portable. You could never do that before. So in our view the whole shift from local to national has occurred in the telecom space.

Technology investment and innovation have created the competition and the consumer choice that we think were the stated objec-

tives of the Telecom Act. As we further upgrade our networks to even higher speed broadband and IP-based technologies, consumers will see even greater benefits in terms of product innovation and economic growth and job creation.

Now, Verizon. Verizon is a major player in this broadband market. You all know that. The key point I would like to make this morning is our record of commitment to deploying new technologies is clear and unquestionable. In fact, we have invested more as a single company in wireless and broadband than any other single company in the industry, and we continue to use our more than \$12 billion a year in capital spending to aggressively transform our networks and our business model around new technologies in these markets. Of course, these network investments include things like expanded DSL service, packet switches that work on IP protocols, large-scale deployment of fiber optics, wireless, and the first ever deployment of wireless broadband.

So, Mr. Chairman, there should be no doubt about our commitment to manage our business for the future or our willingness to take the business risk associated with investing in these new technologies. So for us, the question for us goes to the wireline or the traditional side of our business, is whether this level of commitment that we have made to investment is really sustainable over the long term.

In our view, under the present regulatory regime that we operate under we feel that the ability to continue this level of investment is highly speculative. Now, the problem lies in the imbalance between the rules for investing in the wireline network as opposed to other technologies such as cable or wireless. The current system subjects those investments that we make in wireline to conflicting agendas and interpretations of regulatory agencies at every level of government, from municipalities to States to the Federal Government, imposing costs, injecting ambiguity, introducing bureaucratic red tape into every investment decision involving the wireline network.

This is evidenced in our results over the last four or five quarters, including the last quarter, which shows that our wireless business has had a steady growth rate of more than 15 percent a year for the past 2 years, our wireline business has been shrinking at an average rate of 4 percent a year.

Now, our view is that, even in light, in the face of this shrinking business, we have been willing to invest to transform our growth profile around these new technologies, and we have done that with the understanding that over the course of the last 7 or 8 years, with the Telecom Act having been passed, that we would see a more stable environment for rules and investment.

What we have found is the process is getting worse. So for us, we are very much concerned that we will continue to have to shift our focus away from wireline if we do not straighten out the imbalances that exist in regulation on the wireline side of the business. Any business person would tell you that there is always a short period of time that we would be willing to live with some business risk and some ambiguity, but 8 years now is a long enough period of time when we should have this thing straightened out. As we look out into the future, we think the practices of the past 8 years



are likely to become the permanent rules under which we operate, which is just not acceptable to us.

So what do you do? What we would ask is that Congress take the lead in creating a new legislative framework for the broadband era based on the same principles that govern any technology-driven industry, including cable or wireless, and have a policy that provides stability and uniformity across the industry and across the country, a policy free from any form of economic regulation of these investments, and common rules for enforcement, technical standards, and public safety where the Congress thinks they are needed.

So you know that this is in our interest to see this happen. It will give us a chance to grow and compete. We are one of the few companies that have the resources and the will to participate in this market. Why is this good for you and the country? It is obvious. We will create economic growth and economic development. For every dollar we spend and invest in our business, it creates three dollars in additional investment and growth in other industries that depend on telecom services.

Having said that, I appreciate the opportunity to address you this morning and hopefully you can clear the path to the future so we can all participate on a more even keel basis.

Thank you.

[The prepared statement of Mr. Seidenberg follows:]

PREPARED STATEMENT OF HON. IVAN SEIDENBERG, CHAIRMAN  
AND CHIEF EXECUTIVE OFFICER, VERIZON

Mr. Chairman, Senator Hollings, and members of the Committee, thank you for the opportunity to join in this important examination of the future of telecommunications policy. Verizon invests more capital, employs more workers, and serves more customers than any other communications company in the U.S., so we have a vital interest in the outcome of your deliberations, as does the entire American economy.

I would like to make three points this morning:

- First, that the communications industry has been changed forever by a new era of mobility and broadband networks,
- Second, that Verizon is excited about the industry's future and its potential to contribute to the economy and improve our quality of life,
- And finally, that we urgently need a new approach to public policy in order for us to continue investing in the high-speed broadband networks at the heart of this vision of the future.

**A New World of Communications**

This committee has heard a great deal of testimony about how radically technology has transformed the communications industry since Congress last took up this debate in 1996. This year, the total number of long distance calls made over the wireless network will exceed those made over the wireline network. More than 160 M Americans have wireless phones, almost one in five of whom will use their mobile phones as their main communications device. More than 70 percent of American households are connected to the Internet, increasingly via broadband connections provided by cable, wireline and wireless networks. A hundred million Americans now regularly use e-mail. Instant Messaging is not only becoming the principal means of communication for young people, but is also evolving beyond text into voice and video.

And with the emergence of the Internet—which interconnects all these networks using an IP protocol—you don't need to own the pipeline to offer these services to customers; you just have to put your application and your content on the Internet, where customers can reach it over their broadband connections. That's what we're seeing now with the emergence of Voice-Over-IP—basically, as an application that can be offered on the Internet and essentially bypass the carrier who has the pipe into the customer. So we're seeing a whole new challenge to the traditional definition of communications services.

The result of this explosion of new technologies is that the objectives envisioned by the framers of the Telecom Act of 1996—competition, consumer choice, and rapid innovation—have been realized, not because of *regulation* but because of *technology*. About 40 percent of long-distance telephone and about a third of local telephone use has been supplanted by new technologies. But while revenues and access lines in the traditional telephone business are declining, the electronic communications market is expanding, providing Americans with many networks and many services from which to choose.

In fact, I would argue that the “telecom industry” as we knew it is history. In its place will be the “broadband industry” made up of new, superfast, multimegabit networks that can deliver video, data and voice in entirely new ways. Today’s “first-generation” broadband connections—whether DSL or cable modems—are just the first step. *Truly* high-speed, multimegabit networks go beyond faster downloads or cheaper phone calls, enabling two-way, multimedia capabilities that will revolutionize commerce, education and health care.

Verizon agrees with the Consumer Electronics Association, the High Tech Broadband Coalition, and TechNet that delivering 100 megabits of capacity to people wherever they are—at home, at work, on the go—should be the long-term goal for the communications and high-tech industries. These kinds of networks will create a platform for new applications, services, and communications technologies, giving Americans even more choices in the electronic communications marketplace than they ever could have imagined.

#### **Verizon’s Vision of the Future**

Verizon is a major player in this new broadband marketplace, and we are aggressively transforming our wireline and wireless networks around new technologies and new markets. My company invests close to \$12 billion in capital every year, more and more of it to deploy the broadband networks on which the information economy runs:

- We have equipped over 40 million lines of our network with DSL capabilities and will continue to expand coverage, increase speeds, add customers, and provide new services like VoIP.
- We are converting from circuit switching to packet switching to accommodate the upsurge of IP-based traffic.
- This month, we will begin a large-scale deployment of fiber in our local network. We expect to pass 1 million homes this year and, potentially, another 2 million in 2005.
- And we have the largest and most advanced wireless network in the U.S., which itself is rapidly moving to broadband speeds. In fact, our wireless broadband service, EV-DO, is available right here in Washington, D.C. and we are moving quickly to expand it nationwide.

Our strategy is to differentiate our company through investment and innovation: new applications, services and network platforms. We have shown how this dynamic works in our wireless business, which is a technology and quality leader in the industry. It is vital that we be able to do the same in our wireline business by making the huge investments required to transform our copper network around the requirements of the broadband era.

These investments benefit not only the millions of homes, small businesses, hospitals, schools and corporations who rely on Verizon’s networks for high-speed access, but also have an enormous multiplier effect on the American economy in general. Every dollar of capital we invest generates \$3 of investment in the economy as a whole. One study finds that accelerated broadband investment by telecommunications companies would add more than \$400 billion to GDP and 1.2 million jobs over the next 10 years. And keep in mind, these jobs will not only be in the high-tech sector, but throughout the economy: manufacturing, small business, creative, even at-home work.

That is why the debate over telecom policy—in particular, its impact on investment and technological progress—is so important to America. The truth is, the U.S. is falling behind the rest of the world when it comes to broadband deployment—11th, to be precise, in one study. The average household in South Korea has more bandwidth than the average American business. Countries like Japan are deploying more fiber in their local networks than we are, forcing the U.S. to play catch-up in an infrastructure critical to technologies such as fiber-optics. The extent of the harm to the U.S. economy is evident in the latest employment statistics, which show that the information technology sector—computers, telecom equipment, and telecom services—is still *losing* jobs, even while the rest of the economy is *growing*.

Verizon is optimistic about the future of our industry, and we believe our company has a positive, constructive role to play in delivering a new generation of technology to our customers. As we do, we will help stimulate a new wave of productivity growth, create the entrepreneurial activity that is key to America's economic leadership, and deliver the long-promised social benefits of broadband in health care and education.

#### **A Policy Framework for the Broadband Era**

However, for that to happen, we need a policy framework suitable for a broadband era. Unfortunately, today's public policies are badly out of synch with market realities.

The world Verizon operates in is characterized by the emergence of large, well-capitalized strategic competitors who are rapidly deploying IP and broadband networks to offer high-speed data, video and voice services in our markets. In fact, the C.E.O. of one of our biggest strategic competitors is sitting at this table. Brian Roberts's company, Comcast, currently has the leading market share in broadband in our markets and is rapidly upgrading its networks to offer IP telephony, as well. Unlike Verizon, Comcast can make these network investments in response to customer demand and market opportunity. It can earn a reasonable return on investment, unfettered by sharing obligations or asymmetrical tax burdens. And it can make investment decisions in an environment of reasonable stability, without the uncertainty of ambiguous and changing regulations.

Similarly, wireless companies—including Verizon Wireless—can invest and innovate like real businesses. Wholesale rates are negotiated commercially. Prices are set in the marketplace in an environment of vigorous competition. The result is a market in which companies compete on price, quality and innovation, to the benefit of consumers across the country.

Yet the world as seen through the lens of telecom policy could not be more different. In fact, today's policies ignore these market realities entirely—regulating my company one way and Mr. Roberts' another with respect to the very same types of services.

Today's regulations look backwards to a time when the world was dominated by a single company, offering a single service. Under the current regime, *regulators*—not *customers*—set prices, create competition, and pick winners and losers. And because these rules focus almost exclusively on the old definition of communications—the traditional voice business—they discourage investment and innovation in the segment of the industry that arguably serves the broadest base of customers.

To see the consequences of a system that imposes costly, burdensome rules on one set of competitors, compare the pace of innovation and investment in the heavily regulated telecom business with that of wireless, cable, Internet and other technology-driven industries.

This is not good for America's long-term competitiveness in an industry vital to our future.

Let me be very clear. Verizon does not seek to impose new regulatory burdens on Mr. Roberts's company or any of our competitors. On the contrary, we believe government regulation of broadband investments and Internet services is both unnecessary and inappropriate. Instead, we seek a forward-looking, market-based policy framework for *all* competitors—one that puts us on the same footing as cable and wireless network providers.

Congress has taken some important first steps in this direction. For example, we commend this Committee for urging the Senate to pass the Internet Tax Moratorium, which keeps new IP services free of onerous tax burdens. In particular, we applaud the leadership shown by Chairman McCain and chief sponsors Senators [George] Allen and [Ron] Wyden, and the strong support from Senators [Trent] Lott, [Barbara] Boxer and [Ted] Stevens. It is our hope that the House and Senate can come together to ensure that this important legislation is enacted.

We also applaud Senator Sununu's efforts to ensure that Voice-over-IP will be free from a patchwork of potentially burdensome and inconsistent state regulations. As we move forward, we need a comprehensive policy framework to make sure that all investments in new fiber networks are not burdened with costly rules that increase risk and reduce incentives to invest.

The President has said we need to clear out the "regulatory underbrush" to encourage the growth of broadband. The FCC is moving on the right path by working to ensure that deployments of new, broadband technologies are not burdened by traditional, heavy-handed regulation.

But regulators must rely on frameworks and guidance from Congress. It is clear to me that in order to take the major steps needed to break the industry out of the

old regulatory structures of the past, Congress will need to provide a new vision. That vision should have the following elements.

- First, it is imperative that government decision makers understand how radically different the telecommunications market has become and incorporate that understanding into policy decisions. Harmful policies are based on “old think” and outdated stereotypes.
- Second, we must shift our view of what government’s primary role is in this new telecommunications market. Traditional prescriptive regulation tends to drive all services down to a “least common denominator” level where little difference in networks, services or options is possible. Consumers want more options, more control, and more innovation.
- Third, government should not impose price controls on selected services and transactions, thereby skewing the market and the incentives for efficient growth, impose operational constraints on technologies in an attempt to anticipate hypothetical problems, or impose burdensome and uneven taxation and regulation on one technology over another.
- Finally, government should recognize the power and properties of networks because efficient, innovative networks require scale and scale is what drives consumer satisfaction—the more people and places any person can reach, the more valuable the network. It should continue to allocate spectrum and continue to facilitate more efficient ways to allow firms to use that spectrum. And it should focus on the role government may play in using broadband and advanced communications technologies to address the social challenges of our time, including telemedicine, improved emergency services and online education applications.

Before I conclude, let me make one final point about the future of public policy. Any effort on the part of Congress to reform the laws governing communications must be matched by an equally thorough revamping of the state and Federal regulatory process. Without such reforms, the objectives of even the most well-intentioned legislation are in danger of being thwarted by the conflicting agendas and interpretations of multiple regulatory bodies. Only by paying close attention to the process by which telecom laws are implemented and enforced can Congress make sure new legislation produces the effects you intend.

Complexity and uncertainty are the enemies of investment. You have the opportunity to clear the path to the future. I urge you to act on that opportunity with all due speed.

Mr. Chairman, the world has changed in telecommunications. Consumers have more options and the market is more competitive than ever. We need to stop making policy by looking in the rear-view mirror and create a forward-looking framework that rewards the investment, innovation and risk-taking at the heart of technology-driven industries.

We believe in this business. We are excited about the future and about our role in delivering the promise of the broadband era to customers. And we are confident that, with the right policy framework in place, communications can once again be an engine of economic growth and catalyst for innovation in this vital industry.

Thank you, and I look forward to your questions.

The CHAIRMAN. Thank you.

Mr. Roberts, welcome.

#### **STATEMENT OF BRIAN L. ROBERTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMCAST CORPORATION**

Mr. ROBERTS. Thank you. Chairman McCain and members of the Committee: I appreciate the opportunity to share our views on the status and direction of communications policy in America. I think the right place to begin is with the excellent articulation that appeared in the preamble of the Telecommunications Act of 1996. It called for a pro-competitive deregulatory policy to promote investment, innovation, and competition in all segments of communications. That vision signaled a major change in direction, from decades-old interventionist policies that tended to artificially limit competition to policies that embraced markets, encouraged facili-

ties-based competition, focused on breaking down entry barriers, and paring away counterproductive regulation.

To the extent that we have remained true to that vision, I believe consumers have benefited, and the greatest success story of the 1996 Act are what has happened in video and broadband markets. This chart shows you annual cable investment in innovation. From 1992 when Congress regulated cable until 1996, when the industry was stagnant—our industry was stagnant between 1992 and 1996. The investment in new technology was literally frozen and new programming networks came to a halt.

Then in 1996 the Act passed and it really changed everything. The Act removed the strict regulations on cable pricing and packaging effective in 1999. With the signing of the 1996 Act, the investment community finally regained confidence in cable and became willing to support the massive investment in video and broadband. In the last 8 years, the industry as a whole has invested over actually \$85 billion in new technology. Comcast alone, counting the companies that we have acquired, have invested over \$39 billion.

Before deregulation the industry's annual capital investment was \$4.8 billion. After deregulation, in the average year we spent \$13.4 billion, more than triple. That has allowed all sorts of new services to become realistic to American consumers.

But the 1996 Act was not just about deregulation at the Federal level. It was also about competition. The 1996 Act set the stage for the Satellite Home Viewer Act, which unleashed the direct broadcast satellite industry to fully compete with cable. Until that legislation passed, satellite TV was mostly a rural phenomenon. Since then satellite and other video competitors have gone on to serve one out of every four multi-channel TV homes in the United States.

The 1996 Act also gave the incentive to invest in high-speed Internet. Cable modems really drove the broadband revolution in America, and today Verizon, SBC and other companies compete fiercely with us and they are upgrading their networks, just as we have done, to keep pushing the technology envelope.

Broadband is booming. Only cell phones have had a more rapid consumer acceptance. More than 20 percent of broadband customers, over 16 million homes, subscribe to high-speed network from cable and nearly a quarter of all U.S. homes take broadband from cable, phone, or other providers.

The success of video and broadband, and I would add wireless, proves the wisdom of focusing government policy on promoting facilities-based competition. This is the kind of competition that is real and long-term and sustainable. It does not depend on a regulatory intervention to simulate competition through resale or forced access policies. Promoting facilities-based competition has been and should remain the paramount public policy goal.

As we look ahead, I think we can agree that the next great transforming technology is Internet protocol, or IP, which gives us the ability to convert all forms of video, voice and data into data packets and move them over our networks with greater efficiency and less cost. The main reason we have seen very little facilities-based telecom competition over the past 8 years, particularly in the residential marketplace, is that the available technologies were so lim-

iting. It really has not been possible to offer a phone service that is anything other than me-too.

But the IP platform lets us offer a differentiated product with services like integrated messaging, so you can check your e-mail and voice-mail together on any number of different devices. As we saw some truly incredible IP videophones at the cable industry's national show in New Orleans just last week, it gets me even more excited. Voice-over-IP will make cable a ubiquitous facilities-based telephone competitor, and we have clearly stated, in exchange for the rights we need to compete as a VoIP provider, as it is called, we are prepared to step up to important social responsibilities like universal service, emergency service, and full cooperation with law enforcement.

We need a clear, strong deregulatory policy on VoIP. The FCC's notice and Senator Sununu's bill start us in the right direction. We hope these policies will not have to await a comprehensive rewrite of the Telecommunications Act. We need them sooner rather than later.

Finally, I think that Congress and the FCC already have the right focus: promote facilities-based competition, break down barriers to entry, and reduce regulation. Right now the FCC is clearing the way for new wireless technologies, broadband over power lines, and other broadband alternatives. I believe that American businesses should put their energy and capital into creating these new facilities, as well as folks like ourselves creating new and better facilities, and try not to try to regulate competitors.

Some may not get that message and to them I think Congress should offer the advice: Do not just stand there; build something. We have. \$4.8 billion went to \$13.4 billion per year.

Mr. Chairman, thank you again for the chance to share our views. I look forward to the members' questions.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF BRIAN L. ROBERTS, PRESIDENT AND CHIEF EXECUTIVE  
OFFICER, COMCAST CORPORATION

Chairman McCain, Senator Hollings:

Thank you for this opportunity to share our views on the status and direction of communications policy in America.

In our view, the starting point for this discussion is the excellent articulation in the preamble of the Telecommunications Act of 1996, which calls for a pro-competitive, deregulatory policy to promote investment, innovation and competition in all segments of the communications industry.

That vision represented a major change in direction—from decades-old, interventionist policies that tended to artificially limit competition . . . to policies that embrace markets, encourage facilities-based competition, focus on breaking down entry barriers, and pare away counterproductive regulation.

To the extent that our Nation has remained true to that vision, I believe consumers have benefited. And the greatest success stories of the 1996 Act are what has happened in the video and broadband markets. This chart shows what I mean.

Before 1996, the cable industry was stagnant. The heavy-handed economic regulation imposed by the 1992 Cable Act had frozen investment and innovation. New cable technology and programming had all but ceased.

From 1992 through 1998, the time when the cable industry was under heavy regulation, investment in upgrading the networks and in new programming was very low. You'll notice in 1992 the industry collectively spent only \$2.4 billion. By 1995—in what should have been peak spending years for the industry—the numbers were just over \$5 billion.

Then, in the wake of the 1996 Telecom Act and increased competition from satellite, the industry made a huge bet. With the lifting of many of the most egregious regulations, the industry concluded that “if we build it they will come.” In the eight years since the Act, the cable industry has had a renaissance. We have made massive investments in both video and broadband—over \$85 billion to date by the industry as a whole, and \$39 billion of investment just by Comcast and our predecessor companies in the markets where we now do business. You can see the dramatic rise between 1998 and 1999, when investment almost doubled from \$5.6 billion to \$10.6 billion. As we approach 100 percent completion of the rebuild, the numbers begin to level off and drop slightly year-to-year.

But the 1996 Act was not just about deregulation at the Federal level—it was about competition. The 1996 Act set the stage for the Satellite Home Viewer Act in 1999, which unleashed the direct broadcast satellite industry to invest in advanced facilities and to compete with cable, hammer and tongs. Until that legislation passed, satellite TV was mostly a rural phenomenon. Since then, satellite has gone on to serve one out of every four multichannel TV homes in the United States.

The 1996 Act also gave cable the incentive to invest in high-speed Internet services. Our industry really drove the broadband revolution in America. And today, Verizon, SBC and other companies compete fiercely with us—and they are upgrading their networks, just as we have done, to keep pushing the technological envelope.

Broadband is booming—only cellphones have had more rapid consumer acceptance. In the first quarter of 2004, about two million more homes signed up for broadband from cable, phone companies and other sources. Today, more than 20 percent of cable customers—over 16 million homes—subscribe to high-speed Internet from cable, and nearly a quarter of all U.S. homes take broadband from cable, phone, or other providers.

The success of the video and broadband marketplaces—and, I would add, the wireless marketplace—prove that when government policy emphasizes investment in facilities-based competition, markets thrive and consumers benefit.

Facilities-based competition is real, sustainable competition. It does not depend on regulatory intervention to “simulate” competition through resale or forced access policies. Promoting facilities-based competition has been, and should remain, the paramount public policy goal.

Incidentally, I want to dispel any notion that the 1996 Act “deregulated” cable. I can point you to over 60 pages of the U.S. Code, over 200 pages of FCC regulations and forms, and over 30,000 separate and distinct local franchise agreements, under which our industry must operate every day. While the regulatory load has been loosened somewhat, it is still substantial.

As we look ahead, I think we can agree that the next great transforming technology is Internet protocol, or “IP,” which gives us the ability to convert all forms of video, voice and data into data packets, and move them over our networks with greater efficiency and less cost.

I think the key reason we have seen very little facilities-based telephone competition over the past eight years—particularly in the residential marketplace—is that the available technologies were so limiting. It really hasn’t been possible to offer a phone service that is anything other than “me too.” That means the only basis for competing is price, and that doesn’t create much incentive to invest.

But the IP platform makes it possible to compete on innovation and services as well. With services like integrated messaging, so you can check your e-mail and voice-mail together on any of a number of different devices . . . or give each person in your home a distinctive ring tone so they’ll know who the call is for . . . or create a videophone service that people really want to use—in fact, some exciting new videophones captured the imagination of all of us who saw them at the cable industry’s National Show in New Orleans last week.

VoIP will make cable a ubiquitous facilities-based telephone competitor. And as VoIP providers, we have made it clear that in exchange for the rights we need to compete, we are prepared to step up to important social responsibilities like universal service, emergency services, and full cooperation with law enforcement.

VoIP can fundamentally and positively change telephone competition in America . . . but only if we can have a clear, strong deregulatory policy. The FCC has started down that path. And the legislation on VoIP introduced by Senator Sununu goes in the right direction. We sincerely hope that getting clarity on VoIP will not have to await a comprehensive rewrite of the Telecommunications Act. This is something that needed sooner, rather than later.

In conclusion, I think that Congress and the FCC already have the right focus: promote facilities-based competition, break down barriers to entry, and reduce regulation.

The FCC is working tirelessly to clear the way for a wide range of new wireless technologies, broadband over power lines, and other broadband alternatives. American businesses should put their energy and capital into building these new facilities—and not into trying to regulate competitors. To those who don't get the message, I hope you will offer this advice: "Don't just stand there—build something!"

Mr. Chairman, thank you again for the chance to share our views, and I look forward to the Members' questions.

The CHAIRMAN. On your chart there, Mr. Roberts, why is—how do you account for the downturn there?

Mr. ROBERTS. The rebuild cycle peaked out. But if you take the annual spending, that adds up to \$85 billion since 1996. In the last couple years, as a number of systems have the two-way fiber-based technology, you are still spending way more than you were before it came along, but we are beginning to have the peak periods get behind us.

The CHAIRMAN. You are not concerned about that downturn?

Mr. ROBERTS. No. I think, you know, we have borrowed to do this, so we have got to pay back some of the borrowings. But we have in our company—

The CHAIRMAN. I do not know why you have to. We do not.

[Laughter.]

The CHAIRMAN. Mr. Ford.

**STATEMENT OF SCOTT FORD, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, ALLTEL CORPORATION**

Mr. FORD. Well, everybody has heard of Verizon and Comcast. I am the CEO of ALLTEL, one of the many companies in regional sections of the country that get to compete against both of them. We are a telecommunications provider, an integrated telecommunications provider, with almost 13 million customers and over \$8 billion in annual revenues. We provide wireless, local telephone as an ILEC, local telephone as a CLEC. We provide long distance service, Internet access, and high-speed or broadband data services to residential and business customers in largely rural and smaller metropolitan areas in 26 states.

While almost 60 percent of our revenues are generated by our wireless business, our roots go back 60-plus years as an independent rural telephone company.

I would like to thank you to have just a minute to give our views on the topic in front of you today. In 1996, the Act that you passed I think made a good faith effort to deal with the rapid technological changes that were sweeping the traditional telecom industry. However, politics being what they are, it largely resulted in compromise legislation between the largest and most antagonistic industry segments, the RBOC's, the wireline telephone business, and the long distance companies.

I think, further, the Act did not view the industry and technology as as fluid as it turned out to be and it took a fairly static view. I think the Act—I think it would be fair to say that in 1996 not even the most outlandish telecom futurists would have foreseen the situation that we are dealing with today, one where both telephone and cable companies are seeing their economic model move from one of service provider to that of access provider only, one where the customer will increasingly use their broadband access device, from whoever they get that from, to replace the traditional tele-



phone and eventually to replace the traditional video service offerings with self-selected applications, and one where the broadband connection is becoming increasingly available in a device, such as a wi-fi-enabled PC or an EVDO phone, not through either one of the traditional networks that are represented in the testimony you have already heard.

Consumers today have an unprecedented and ever-growing array of choices in how they communicate. ALLTEL's customers show us every day they value two things: mobility and high speed.

Setting aside the impact of the wireless industry for the moment, the evidence of success in the new telecom entrants is undebatable and only just beginning. By some estimates, e-mail and instant messaging have displaced some 40 percent of traditional local telephone calls, and two of America's top ten telecom companies are cable companies.

While local telco's have recently started posting better results, according to an article in *Telephony* magazine last week, the cable companies still hold a 2-to-1 lead over the telephone companies in providing broadband access. This tremendous lead does not reflect simple technological differences, but rather economic incentives and regulatory freedom. So if we are to have rules, I think we need one set of rules for everybody that is in the business. I think that is the bottom line take-away from that.

While the world and technology have changed a lot since 1996, most of what has been done on the legal side has been done in courts. Cable, wireless, satellite, wi-fi, ultra-wideband, wireless, they all remain largely free from Federal and State regulation, as they should be in a competitive marketplace in the world's leading free market economy. However, ALLTEL, like the other local exchange businesses in the country—and this is about 40 percent of our business—remains shackled by Federal and State regulation that limits our flexibility and competitive position. Just like the chart showed you a moment ago that capital spending in cable has gone up, in the wireline business, faced with the inability to change prices, to bundle, to offer services in the fashion that the consumer would take, we have been decreasing our spending in the local telephone business.

The benefit of minimal regulation under one set of rules, though, is probably best illustrated by the enormous growth of the wireless industry. The wireless trade association, the CTIA, reports that 98 percent of the U.S. population now lives in markets that are served by three or more wireless operators. 93 percent of Americans are served by four or more operators. 83 percent are served by five or more operators. And a full 66 percent are served by six or more wireless operators.

Multiple wireless service providers are offering services to effectively all Americans today and the consumers are receiving the benefit. In the mean time, wireless service providers have continued to build out and invest in their networks and introduce new service features. By any measure, the wireless marketplace is a true success story for the American consumer, where the free market has delivered effective competition, sustainable competition in some markets, probably unsustainable in others, and the competi-

tive benefits that come from that, like radically lower prices, improved reliability, and leapfrog-like investment in new technology.

Local telephone companies, by contrast, are stagnating under rules written for a bygone era where any investment made, unfortunately, is subject—and we have to view it this way—is potentially subject to economic seizure by regulators for the benefit of competitors. These rules assume a monopoly on access that, frankly, no longer exists. The results have been devastating. You have all read about it.

[Cell phone rings.]

We do not make any money until you answer that, so we appreciate you getting it.

[Laughter.]

Mr. FORD. Hundreds of thousands of jobs lost, \$2 trillion in market value dissipated, and some quarter of a trillion dollars in capital investment gone from the telecommunications business. Lots of analysis about the fact, and Mr. Seidenberg referred to some of it, that up to \$3 billion a year in new investment would be made in telecom, according to the experts, in a free market-based economy rather than a managed competitive model.

Now, in all fairness, I think the pink elephant in the room is this. The effects of major technological change that we are undergoing in our industry is probably going to express itself in a very deflationary cycle for all of us sitting at this table.

The key policy issue—

The CHAIRMAN. Because?

Mr. FORD. I am sorry, sir?

The CHAIRMAN. Because?

Mr. FORD. Because new technology allows cheaper service that will be moving from the networks and the way that we build networks, the way that we sell our networks, onto applications. Right now you buy voice as a service and you buy cable TV as a service. The technology that is being deployed, largely by cable companies and some in the wireless business, is going to be able to let you make a decision, do you want to do business with Verizon for voice or do you want to take that application from somebody else. Everybody's prices drop to meet that kind of paradigm shift.

So I think the key policy issue is this: the wireline telephone companies, probably for lots of historical reasons—and I think some of the views have already been expressed this morning—but they are prohibited from making the next generation of investments that are going to be required for them to be competitive 5 to 10 years from now because of the disparate regulatory and legal frameworks that exist across the country. It is true for us, so I know it is true for companies that are larger than we are.

So while the current environment may not provide the perfect opportunity to write new legislation, I think it is past time, frankly, if we can get a framework that will reward companies for moving into the future.

I will summarize this way. Investment is a forward-looking act of faith. Where we have had spectrum rules and competitive dynamics that we could understand, we have invested in the wireless business. Where we have regulatory rules on a State by State, city by city basis in the wireline business, we have pared our capital

spending and will continue to pare our capital spending. And we are the ones—we represent many companies, about a thousand of us—that actually serve rural America, the actual opposite of everything that we say we are trying to get done.

But because we are not free to invest because we cannot turn our shareholders' money over to a regulatory scheme that then some regulator says, I do not like the mix in the business, so I am going to take it and make you sell it to somebody else. It is a systemic problem and if you can do something about it with a set of rules that encourage facilities-based competition, frankly, I stand to gain and I stand to lose by such a set of rules. But I think long-term it is the policy that will benefit the consumer and, frankly, the economy and the country long-term.

Thank you very much for the opportunity to be here this morning.

[The prepared statement of Mr. Ford follows:]

PREPARED STATEMENT OF SCOTT FORD, PRESIDENT AND CHIEF EXECUTIVE OFFICER,  
ALLTEL CORPORATION

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today. I am Scott Ford, President and Chief Executive Officer of ALLTEL Corporation. ALLTEL is an integrated telecommunications provider with almost 13 million customers and over \$8 billion in annual revenues. ALLTEL provides wireless, local telephone, long-distance, Internet access and high-speed or "broadband" data services to residential and business customers in largely rural and smaller metropolitan areas in 26 states. While almost 60 percent of our revenues are generated by our wireless operations today—our roots go back some 60 plus years as a rural, independent telephone company.

I commend Chairman McCain and the Members of the Committee for holding this hearing and the two previous hearings on telecom policy. These are important steps in reviewing how telecom policy might be changed to better meet the needs of customers in the 21st century.

In passing the 1996 Act, Congress made a good faith effort to deal with the rapid technological changes that were sweeping the traditional telecom industry—however, politics being what they are—the 1996 Act was largely a compromise between the largest and most antagonistic industry segments—namely the local wireline and long-distance companies. And while it did allow new market entry by some, in the end, the Act represented a static view of the industry and the market. The Act also did not fully anticipate the rapid development and deployment of the numerous alternative technology platforms and providers that have emerged as the most formidable competitors to the regulated local telephone companies.

In fact, I think it fair to say that in 1996 not even the most outlandish telecom "futurists" would have foreseen the situation we are dealing with today. One where both telephone and cable companies are seeing their economic model move from one of "service provider" to that of "access provider" only. One where the customer will increasingly use their broadband access device to replace traditional telephone and video service offerings with self-selected applications. And one where the broadband connection is becoming increasingly available in a "device" such as a WiFi enabled PC or a 1xEVDO wireless phone, not just through a "traditional network".

Consumers today have an unprecedented and ever-growing array of choices in how they communicate. ALLTEL's customers show us every day that they highly value mobility and broadband speed, as the number of homes and small businesses that use wireless phones for voice and broadband connections for data continues to increase while the number of traditional telephone lines—even in our non-urban markets—continues to shrink.

Setting aside the impact of the wireless industry for the moment, the evidence of the success of new telecom entrants is undebatable and only just beginning. By some estimates, E-mail and Instant Messaging have displaced some 40 percent of traditional local phone calls and two of America's top telephone service providers are in fact cable companies. And while the local telco's have recently started posting bet-

ter results, according to Convergent Consulting,<sup>1</sup> at year end 2003, the total broadband connections provided by traditional cable companies outpaced their telephone counterparts by a two to one margin. This tremendous lead does not reflect simple technological differences, but rather, economic incentives and regulatory freedom. So if we are to have rules, we need one set of rules for *all* broadband service providers, regardless of the technology or method used to deliver it or what origin the service provider had.

While the world and technology have changed a lot since 1996, the regulation governing telecom has remained the same. Cable, wireless, satellite, Wi-Fi and ultra wideband wireless are all largely free from Federal and state government regulation—as they should be in a competitive marketplace in the world’s leading free-market economy. However, ALLTEL, like the other local exchange businesses in the country, remains shackled by Federal and state regulation that limits our flexibility and competitive position.

The benefit of minimal regulation under one set of rules is best illustrated by the enormous growth and vitality of the wireless industry. The Cellular Telecommunications & Internet Association (“CTIA”) reports that 98 percent of the U.S. population now lives in markets served by three or more operators, 93 percent in markets served by four or more operators, 83 percent in markets served by five or more operators, and 66 percent in markets served by six or more operators.

Multiple wireless service providers are offering services to effectively all Americans today, and consumers are benefiting from the unprecedented choice of service offerings. In the meantime, wireless service providers have continued to build out and invest in their networks and introduce new service features. By any measure, the wireless marketplace is a true success story for the American consumer—where the free-market has delivered effective competition, and competitive benefits like radically lower prices, improved reliability and “leap-frog” like technological investment.

Local telephone companies, by contrast, are stagnating under rules written for a bygone era where any investment made is subject to economic seizure by regulators and competitors. These rules assume a monopoly on access that no longer exists. The results have been devastating: hundreds of thousands of jobs lost, \$2 trillion in market value dissipated and a drop by some quarter of a trillion dollars in capital investment. According to recent analysis, capital spending on communications equipment alone would increase by almost \$3 billion a year for the next five years<sup>2</sup> and our economy would see some 1.2 million additional jobs over the next 20 years<sup>3</sup> under a market-based competitive model. Rules that incent a robust and vital telecom industry benefit consumers, our economy, and our society as a whole. Public policy in this arena is potentially a major driver of economic growth. If unchanged though, our laws will continue to block investment and the benefits of the resulting competition.

Now in all fairness, it should be noted that the “pink elephant in the room” is that this kind of disruptive technological change is probably going to have a deflationary effect on all traditional participants. The key policy issue remains though that the wireline telephone companies are virtually prohibited from making the next generation investments required to be competitive over the next several years by the disparate regulatory and legal frameworks that exists across the country.

While the current environment may not provide the perfect opportunity to write new legislation, the need for rules that acknowledge the radical technological progress in our industry is clear and we must build a legal framework that will reward companies for moving into the future.

I believe that this country would be well served if this body were to write rules that treat all competitors providing similar services equally without regard to the definitions of the past—rules that rely on the operation of our free-market economy rather than management by our Federal and state governments. Investment is a forward-looking act of faith. Without free and fair markets we will not attract the capital, the economy will go without the associated growth, and our customers will go without the benefits that only economically sustainable competition can bring.

Free markets work for America in virtually every sector of the U.S. economy today. Market-based competition enables innovation, better services, better technology, and ultimately the choice to take your business elsewhere. The telecom industry has extraordinary potential to create jobs, enhance our quality of life, open up new economic opportunities in American communities, and benefit our economy.

<sup>1</sup>Telephony, “RBOCs Gird For Broadband Battleground” (May 3, 2004).

<sup>2</sup>Decision Economics, “Macroeconomic Effects of Telecommunications Regulation” (May, 2004).

<sup>3</sup>“The Effects of Ubiquitous Broadband Adoption on Investment, Jobs and the U.S. Economy,” New Millennium Research Council (September, 2003).

Achieving fundamental telecom reform for the 21st century will likely not be an easy task to accomplish, but it is achievable if we take our cue from the reality of the market and the basic principles of consistency and simplicity. It involves a choice between embracing the new and dealing with its inevitable changes—some good and some bad—and letting the market sort it out—or being encumbered by the past and its traditional definitions and limitations.

Finally, in my opinion, we must keep faith in the American belief that great things can come for our country if we free the marketplace to drive powerful new cycles of American investment, innovation, and growth. And frankly, our company stands to lose as well as gain from such a marketplace—but we look forward to the opportunity to compete on a level playing field. I recognize that divining truth in this arena must be a very daunting task for the members of Congress from so many disparate voices—so on behalf of the 20,000 employees of ALLTEL I extend our gratitude for your public service.

Mr. Chairman and Members of the Committee, thank you for holding these hearings. I look forward to answering your questions, and stand ready to assist your efforts. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Betty, would you pull the mike up. Thank you. Welcome.

**STATEMENT OF CHARLES “GARRY” BETTY, PRESIDENT AND  
CHIEF EXECUTIVE OFFICER, EARTHLINK, INC.**

Mr. BETTY. Thank you, Mr. Chairman and members of the Committee. I am Garry Betty. I am President of EarthLink. We serve 5.3 million subscribers. We are one of the largest independent Internet service providers in the United States, providing dialup, broadband, web hosting, and wireless Internet services.

As you know, the purpose of today’s hearing is to review our telecommunications policy. As the members of the Committee are aware, such policy is the focus of several ongoing proceedings both here and at the FCC. However, we are troubled by the far-reaching attempts by the FCC to classify the facilities used to provide broadband services as end to end information services.

Common carrier transmission services are the foundation of the information economy. If such services were no longer available to information service providers upon reasonable request on non-discriminatory terms and conditions, incumbents could close their networks to competitive providers, services, and innovations. This would hurt consumers.

Congress has enacted a body of laws over the years to promote competition, to protect consumers, and provide for public safety. Neither the FCC nor incumbent companies can ignore the plain language that Congress wrote in the Telecommunications Act of 1996.

The central issue in this hearing, several current FCC proceedings, and in any proposed rewrite of the 1996 Act would be the regulatory classification of broadband services. Let me be clear in answering this question. All Internet access services, whether provided by an independent ISP like EarthLink, a telco affiliate like Verizon On Line, or a cable company like Comcast, are information services.

Let me be equally clear, though, that the information services are delivered via telecommunications and offering such telecommunications, whether by telco or cable company, for a fee to the public makes them telecommunications services. Internet access, broadband or otherwise, is therefore an information service riding

on top of a transmission component, which is telecommunications service.

Today the RBOC's have enjoyed a government-granted monopoly for almost a century as they built out their transmission networks while rate of return regulation ensured profits. Cable companies talk about risk capital, but enjoyed monopoly franchises, the cable-telco cross-ownership ban, and low-cost access to poles, ducts, conduits, and rights of way for decades as they built out their networks. Thus, incumbent telephone and cable companies still have 85 percent or more of their customers in their core business and some 95 percent of all broadband or cable modem customers respectively.

Eight years after the passage of the Telecommunications Act, it is clear that no one has benefited more than the incumbent providers. Regional Bell operating companies have gained 271 authority to offer long distance services in all 50 States. At the same time, CLEC's have seen their ranks decimated, while UNEEP, their best tool for offering local voice service competition, was taken away by the D.C. Circuit's recent vacatur of the FCC's review order. In broadband, that same order even eliminated line sharing on existing copper loops. The FCC thus has not only granted the Bells the regulatory relief they demanded, but has erased a key component that promoted DSL deployment to date.

Until recently, cable providers held almost a two to one share advantage over DSL. Telco's blame this shortfall on regulatory disparity, but in the first quarter of 2004 DSL sales actually exceeded those for cable modem service. So the regulatory disadvantage of which the Bells complain does not withstand scrutiny.

In cable, competition is also scarce. Incumbent providers still control over 95 percent of broadband cable modem services. Unfortunately, the FCC's misguided attempt to classify cable modem service as an end to end information service has allowed most cable companies to extend their monopolies to broadband. However, the Ninth Circuit Court of Appeals in October 2003, overturned the FCC's cable modem order and correctly ruled that cable modem service contains an underlying telecommunications service transmission component.

In March 2004, the full court denied petitions for rehearing the FCC and cable companies. I am sure they will likely seek Supreme Court review, but even review, not to mention reversal, is questionable.

In sum, rather than trying to rewrite the 1996 Act, Congress should insist that the FCC enforce the provisions of the current act. In many respects the 1996 Act has been a great success. Over 35 million on-line households now have broadband access. In many cases prices are falling and speeds are increase, and DSL is even catching up to cable's market share. The incumbents are doing better than ever.

In fact, the only area where the Act has fallen short is promoting more widespread competition in products and services to benefit consumers. So-called facilities-based competition exists between cable and phone companies and that is good as far as it goes, but it only creates a duopoly. And even this limited competition only

reaches two-thirds of American households, leaving many consumers with only one choice, if any, for broadband service.

Only by ensuring that consumers can choose their broadband providers regardless of which wire they use will they enjoy the widest deployment, the best products, features, customer services, price, and innovation.

Thank you for inviting me here today.

[The prepared statement of Mr. Betty follows:]

PREPARED STATEMENT OF CHARLES "GARRY" BETTY, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, EARTHLINK, INC.

Mr. Chairman and members of the Committee. Thank you for the opportunity to testify before you today. My name is Garry Betty and I am the President and CEO of EarthLink. EarthLink is the Nation's 3rd largest Internet Service Provider (ISP), serving over 5 million customers nationwide with dial-up, broadband (DSL, cable and satellite), web hosting and wireless Internet services. EarthLink regularly receives awards for its customer service and innovation, including the J.D. Power and Associates award for highest customer satisfaction among dial-up ISPs and (tie) highest customer satisfaction among broadband ISPs.

The purpose of today's hearing is to review telecommunications policy. As the members of the Committee are aware, such policy is the focus of several ongoing proceedings at the Federal Communications Commission (FCC). Particularly troubling to EarthLink, and I would hope troubling as well to the members of this Committee, are the far reaching effects of attempts by the FCC to classify the facilities used to provide broadband services as end-to-end "information services" under the Communications Act.

Common carrier transmission services are the foundation of the information economy. If such services were no longer available to information service providers upon reasonable request on non-discriminatory terms and conditions, incumbents would be free to close their networks to any competitive providers, services, or innovations. This would work against consumer interests. Even laws like CALEA would no longer apply as the DOJ, FBI and DEA have made clear in recent filing with the FCC. Congress has enacted an entire body of laws over the years to promote competition, protect consumers, and provide for public safety. Neither the FCC nor incumbent companies can ignore the plain language that Congress wrote in the Telecommunications Act of 1996.

The central issue in this hearing, several current FCC proceedings and in any proposed re-write of the 1996 Act would be the regulatory classification of broadband services. Let me be clear in answering this question. All Internet access services—whether provided by an independent ISP like EarthLink, a telco affiliate like Verizon Online, or a cable company like Comcast—are information services. Let me be equally clear that all information services are, by definition, delivered *via telecommunications*, and the offering of such telecommunications, whether by a telco or a cable company, for a fee to the public makes them telecommunications services. This is true whether the Internet access is provided by an independent ISP or by the network operators themselves. Internet access, broadband or otherwise, is therefore an information service riding on top of a transmission component which is a telecommunications service.

In the world of dial-up Internet access these two components are easy to see. Consumers purchase their phone line from their telephone company and their Internet service from an ISP such as EarthLink. The telephone company provides a telecommunications service which can be used to transmit voice or data. The ISP provides an information service. The consumer dials an EarthLink access number, which establishes an underlying transmission link through the customer's phone line; the consumer can then use EarthLink's services to access the Internet. The underlying transmission link is a regulated common carrier telecommunications service. The Internet access service is an unregulated information service.

In the broadband world, the same rules apply. Underlying DSL transmission provided by Verizon is regulated as a common carrier telecommunications service, but Verizon Online's Internet access service is still an unregulated information service. This is the regime that the FCC crafted in its seminal 1980 *Computer II* proceeding, which has been affirmed by the FCC and Federal courts many times in the intervening years, and which Congress adopted in the Telecommunications Act of 1996. As a result, competition in the provision of information services flourished because

the facility owners could not use their ownership of the underlying transmission facilities to leverage their position in the information services market.

Yet, in the case of broadband Internet access, the FCC seems determined to take the exact opposite approach from the one that proved so successful in promoting Internet usage in the first place. For broadband, the FCC suggests that, so long as the facility owner refuses to offer consumers the option of buying the transmission link separately from the information services component, the entire bundled package of transmission and information service is an “information service”. As a result, facility operators are able to shield their transmission networks from requirements for non-discriminatory access by independent ISPs. This all but eliminates competition among broadband Internet service providers and not only violates the letter and intent of the Telecommunications Act, but also does great harm to small businesses and to consumers.

Today’s Regional Bell Companies enjoyed a government-granted monopoly market for almost a century as they built out their transmission networks while rate of return regulation ensured profits. Cable companies like to talk about “risk capital” but enjoyed monopoly franchises, the cable-telco cross ownership ban, and below-cost access to poles, ducts and conduits for decades as they built out their networks. Today, incumbent telephone and cable companies still each have 85 percent or more of the customers in their core businesses and some 95 percent of all broadband DSL or cable modem customers, respectively. Yet competitors to these incumbent facility owners would, under the FCC’s interpretation, have to undertake the impossible task of building their own last-mile network—without any protection or subsidy—in order to continue to compete in the information services business. This result stands the 1996 Act on its head.

It is therefore crucial to distinguish between broadband information services and the underlying telecommunications services which deliver them. Internet access services, whether narrowband or broadband, and whether offered by an independent ISP, an RBOC, or a cable company, remain unregulated information services. But the facility based transmission services that underlie all information services remain common carrier telecommunications services, regardless of whose broadband Internet service the customer subscribes to and whether or not the facilities operator offers those transmission services separately to consumers or as part of a combined package of services that includes information services. Consumers and the economy have benefited over the past two decades from robust competition in an unregulated information services industry. This competition was made possible because the underlying transmission networks remained subject to regulations that require that they be offered to all ISPs on non-discriminatory terms and conditions.

In most areas of the country today there are at best two broadband networks; for many residential consumers there is effectively only one. Both the telephone networks and the cable networks were built with government-granted monopolies over public rights of ways using Federal authority using rate-payer money. To allow these facility owners to now repudiate their obligation to share those transmission networks on a non-discriminatory basis with others who seek to offer telecommunications or information services to the public is an abuse of the law and is anti-competitive. Such an approach would take a robustly competitive and level playing field and tilt it heavily in favor of a few players by allowing them to leverage their transmission facility monopoly into domination of new areas and services. Clearly that was not what Congress wrote or intended when it passed the 1996 Act.

Eight years after the passage of the Telecommunications Act of 1996, it is clear that no one has benefited more than incumbent providers. Regional Bell Operating Companies (RBOCs) have gained § 271 authority to offer long distance service in all 50 states. At the same time, Competitive Local Exchange Carriers (CLECs) have seen their ranks decimated. Incumbent Local Exchange Carriers (ILECs) still control over 80 percent of the local voice market for businesses and over 90 percent of the residential market. And CLECs have just seen UNE-P, their best tool for offering local voice service competition, taken away from them by the DC Circuit’s recent vacatur of the FCC’s UNE Triennial Review Order.

In broadband DSL, the FCC in the same order not only barred competitors from access to new networks like fiber-to-the-home (FTTH), but also barred access to hybrid fiber loops (HFL) and even eliminated line sharing on existing copper loops. The FCC has thus not only granted the Bells the regulatory relief they have so long demanded, but has erased a key component that has promoted DSL deployment to date.

As Chairman Powell correctly pointed out in his dissent to this Order, such a scheme actually eliminates the regulatory incentives for incumbents to deploy new broadband technologies. Why build expensive fiber to the home when even a piece of fiber spliced into a loop is enough to inoculate it from any access by competitors?



And eliminating line sharing strikes a blow to competitive wholesale DSL providers like Covad. Eliminating wholesale DSL competition will only further enhance the Bells' position as the dominant providers of retail DSL service. While we are encouraged that Covad recently struck a commercial arrangement for line sharing with Qwest, none of the other Regional Bell Companies have done so. It is untenable for a retail competitor such as EarthLink to have to rely solely on its biggest competitors for an essential component of their service.

Meanwhile, incumbent Bell companies use their market power to engage in anti-competitive and discriminatory pricing, often selling their retail DSL service at or below the wholesale DSL loop price they charge to competitors. No doubt, recent price drops in DSL service are good for consumers. However, with fair pricing of wholesale inputs, more companies could offer such deals to even more consumers.

Until recently, cable providers held an almost 2-1 share advantage over DSL. Telcos blame this shortfall on regulatory disparity, but that's not the reason for it. Rather, the Bells sat on DSL technology for 10 years. Selling T-1 services to businesses for \$750 a month instead of similar-speed DSL services to consumers for \$50 a month was a business decision which cable exploited to get a jump on the residential broadband market. Also, DSL has inherent distance limitations. Even with aggressive build-out, DSL will never reach all the homes that cable modems can. Nonetheless, in the first quarter of 2004, DSL sales actually exceeded those for cable modem service and DSL now has approximately 20 million customers compared to 26 million for cable. So the regulatory disadvantage that Bells complain of does not stand up to scrutiny.

In cable, the competitive landscape is no better. Incumbent providers still control over 97 percent of cable services, over 80 percent of the multichannel video market, and again over 95 percent of broadband cable modem services. Time Warner Cable is required to sell network access in its 39 major markets but the rest of the industry remains virtually closed to competition. Unfortunately the FCC has aided and abetted this situation. Original inaction, followed by a misguided attempt to classify cable modem service as an end-to-end information service, has allowed most cable companies to expand their monopolies to broadband cable modem service as well. However, the 9th Circuit Court of Appeals in October 2003 overturned the FCC's cable modem order and correctly ruled that cable modem service contains an underlying telecommunications service transmission component. The full court also denied petitions for rehearing by the FCC and cable companies. The FCC and cable companies will likely seek Supreme Court review, but even review, much less reversal, is questionable.

Finally, the emergence of Voice Over Internet Protocol (VoIP) drives much of this debate. The FCC has just opened a docket to develop rules concerning VoIP. Chairman Powell and others have expressed a desire to regulate VoIP as little as possible, but quickly note the need to preserve universal service, 911, disabled access, CLEA compliance and inter-carrier compensation. At the end of the day, we're not sure how much differently VoIP would be treated from traditional voice service, but we might suggest that Congress allow both the VoIP record and marketplace to develop a little more before taking on the task of re-writing the 1996 Act.

While VoIP certainly poses a potential threat to the Bells' core business model, it can also drastically slash their costs. Whether a call is routed over the public switched telephone network or through Internet Protocol is invisible to the customer. VoIP may ultimately serve as a better, cheaper way to route the voice traffic the Bells already handle. In the end, the biggest users of VoIP may be the Bells themselves.

In sum, rather than trying to re-write the 1996 Act, Congress should insist that the FCC enforce the provisions of the current Act. Before we try to fix the current Act, we must answer "What's broken?". In many respects, the 1996 Act has been a great success. Over 46 million online households now have broadband access. In many cases, prices are falling and speeds are increasing. And DSL is even catching up to cable's market share. The incumbents are doing better than ever.

In fact, the only area where the Act has fallen short is in promoting more widespread competition in products and services to benefit consumers. So called facilities-based competition between cable and phone companies is good as far as it goes, but it only creates a duopoly, or more precisely, a "double-headed monopoly". And even this limited competition only reaches about 2/3 of American households, leaving many consumers with only one choice, if any, for broadband services. Only by ensuring that consumers can choose their broadband providers regardless of which wire they use will they enjoy the widest deployment and the best products, features, customer service, prices and innovation.

Thank you for hearing me today and I look forward to your questions.

The CHAIRMAN. Thank you very much.  
Mr. Wilson.

**STATEMENT OF DELBERT WILSON, CENTRAL TEXAS  
TELEPHONE COOPERATIVE ON BEHALF OF THE NATIONAL  
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

Mr. WILSON. Good morning. I am Delbert Wilson with Central Texas Telephone Cooperative, Incorporated. Central Texas is a member-owned telephone cooperative headquartered in Goldthwaite, Texas. Our service area encompasses over 3,302 square miles, which roughly equates to the size of Delaware and Rhode Island combined. We have 17 telephone exchanges providing local exchange service to approximately 7,700 access lines. That is a density of only 2.33 subscribers per square mile.

Through Central Texas' infrastructure investments, we are key to the local economy and the rural economic development of our rural service area. Central Texas is representative of the Nation's small rural incumbent local exchange carriers. The good things we stand for and do make our rural communities a better place in which to live and work. That is why I am honored to be appearing today on behalf of the hundreds of rural local exchange carriers that are represented by NTCA and, more importantly, on behalf of their several thousand employees and several million subscribers.

NTCA members and their fellow rural independents provide service to 7 percent of this Nation's access lines, but actually cover 40 percent of the land mass of this country. We have a mission of service that supersedes profitmaking. We have a mission that is based on responsibilities to the community and the industry rather than focusing only on the bottom line. We have a mission of providing universal service, which means service to all Americans, not just the 92 percent majority that many FCC policies attempt to address. We have done this despite the tremendous regulatory and economic barriers that have historically stood in our way.

For well over 100 years, small rural incumbent local exchange carriers have been engaged in the provision of local telecommunications services throughout rural America. These carriers are the embodiment of the universal service concept, having built the infrastructure that provides ubiquitous high-quality local exchange service and exchange access, as well as a variety of other telecommunications services, to some of the Nation's most economically challenging to serve areas.

This would have not been possible were it not for their dedication to their community and the Nation's longstanding commitment to the policy of universal service. It is no secret that the ability to fully recover costs is the very lifeblood of the small rural ILEC's. Thus, of particular concern to us today are the many regulatory and judicial proceedings that could destroy this ability and subsequently the continued investment in rural telecommunications infrastructure throughout this country.

During this hearing series, you are receiving input from a wide range of witnesses. In many ways their themes are similar in that they revolve around the theory that absolute competition and deregulation are always in the public interest, the telecommunications world can only evolve to the next level with a hands-off pol-

icymaking approach, we must let go of the footings of our past, such as universal service and access charges, and we must abandon the legacy network in favor of the intriguing technologies of the future.

The flaw with all these theories is that none of them alone or even in combination will produce the results their advocates so desperately seek. Why? Because they ignore the fact that through a combination of longstanding social policy, innovation and cooperation a preeminent communications network has been built. They are in denial of the reality that it is only through our national universal service policy and the infrastructure it has yielded that we are able to even think of contemplating the technological wonders of this era.

So if we learn nothing else from these hearings, let us take away the knowledge and recognition that the foundation of our past is at least as important to our future as the mist of so many dreams.

We agree that now may be the time for Congress to weigh in on these matters. Policymakers, the judiciary, the public, and competitors alike must be reminded of the importance of our longstanding national universal service policy. It must be carefully managed to fulfil its public interest goals of providing affordable, high-quality telecommunications services to rural consumers throughout this Nation. Universal service is not a tool to be used to incite artificial competition. It is a tool to help ensure the existence of a nationwide ubiquitous telecommunications network, a network that has been proven again and again to be so critical to our national and economic security.

NTCA and others have particular ideas regarding the future of this program. We will be looking to you for help in arriving at a legislative solution that will ultimately accomplish these objectives. In terms of a broader rewrite of the Communications Act, we would implore the Committee to remain cognizant of the following specific areas that are so critical to rural carriers and the consumers they serve: network compensation, smart regulation over deregulation, access to spectrum, leadership in encouraging nationwide broadband deployment, and above all ensuring a level playing field for all carriers in this competitive environment.

Congress must continue to support the longstanding policy of providing all Americans with access to comparable, affordable telecommunications services now and in the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wilson, follows:]

PREPARED STATEMENT OF DELBERT WILSON, CENTRAL TEXAS TELEPHONE  
COOPERATIVE ON BEHALF OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE  
ASSOCIATION

#### **Executive Summary**

For well over 100 years, small rural Incumbent Local Exchange Carriers (ILECs) have been engaged in the provision of local telecommunications services throughout rural America. These carriers are the embodiment of the universal service concept, having built the infrastructure that provides ubiquitous, high-quality local exchange service and exchange access (as well as a variety of other telecommunications services) to some of the Nation's most economically challenging to serve areas. This would not have been possible were it not for their dedication to community, and the Nation's long-standing commitment to the policy of universal service.

As the industry continues its rapid evolution, and as the calls for a rewrite of the communications act continue to escalate, policymakers and the public alike must not lose sight of the fact that emerging technologies are not free, as many people have come to believe because they are generally riding on the backs of the Nation's existing telecommunications infrastructure. As the migration away from voice only service toward a mix of voice, video and data continues, policymakers must ensure that the universal service policy of this Nation evolves to ensure the dreams associated with the migration ultimately equate the reality of the superiority of the underlying network helping to support them.

Now is the time for congress to weigh in on these matters. Policymakers, the judiciary, the public, and competitors alike must be reminded that the universal service support mechanism, and the intercarrier compensation mechanisms that are in place today that effectuate this policy are resources that cannot be abandoned and that must be carefully managed to fulfill the public interest goal of providing affordable, high-quality telecommunications services to consumers and helping to protect our national and economic security.

### **Introduction**

Good morning! I am Delbert Wilson with the Central Texas Telephone Cooperative, Inc. CTTC is a member-owned telephone cooperative headquartered in Goldthwaite, Texas, which is geographically located in the center of the state. Our service area encompasses over 3,302 square miles, which roughly equates the size Delaware and Rhode Island combined. We have 17 telephone exchanges providing local exchange service to approximately 7,700 access lines. That is a density of only 2.33 subscribers per square mile.

CTTC is rich in history. Created in 1951 by the people of Mills County, it was built to provide telephone service to rural consumers who had never before had service. Due to the sparse population, this area was economically unattractive to the larger telephone companies. Today, throughout our service area, we are involved in many activities that have helped to bring new services, technologies and opportunities to our rural subscribers. Besides local exchange service, CTTC provides wireless cable TV, wired/wireless digital subscriber lines (known as DSL), Internet access, long distance, distance learning, and wireless phone service. Through CTTC's infrastructure investments, we are key to the local economy and the rural economic development of our rural service areas.

CTTC is representative of the Nation's small rural incumbent local exchange carriers. The good things we stand for and do, make our rural communities a better place in which to live and work. That is why I am honored to be appearing today on behalf of the hundreds of rural local exchange carriers that are represented by NTCA—and more importantly, on behalf of their several thousand employees and several million subscribers.

NTCA members and their fellow rural independents provide service to 7 percent of this country's access lines, but over territory covering 40 percent of the land mass of this Nation. We have a mission of service that supercedes profit making. We have a mission that is based on responsibilities to the community and the industry rather than focusing only on the bottom line. We have a mission of providing universal service which means services to all Americans, not just the 92 percent majority that many of the policies emerging from the FCC attempt to. We have done this despite the tremendous regulatory and competitive barriers that have historically stood in our way.

### **The Landscape**

During this hearing series, you are receiving input from large providers, a former regulator, think tanks and myself. While the testimony of the other witnesses is not identical, many of their themes are similar and they are that: "absolute competition and deregulation are always in the public interest. The telecommunications world can only evolve to the next level with a hands-off policymaking approach. We must let go of the footings of our past such as universal service, and access charges. We must abandon the legacy network in favor of the intriguing technologies of the future."

The flaw with all of these theories is that none of them alone or even in combination will produce the results their advocates so desperately seek. Why? Because they ignore the fact that through a combination of social policy, innovation, and cooperation, a preeminent communications network has been built. They ignore that all of this has evolved under a longstanding national policy based on the premise that universal service is in the country's best interest. They are in denial of the reality that it is only through this national policy, and the infrastructure it has yielded, that we are able to even think of contemplating the unlimited wonders we are expe-

riencing with technology changes today and will continue to encounter in the future. So, if we learn nothing else from these hearings, let us take away the knowledge and recognition that the foundation of our past is at least as important to our future as the mist of so many dreams.

Please don't misinterpret my message today. In fact let me be perfectly clear. As small businesses, rural community based telecommunications providers strongly support the idea that new technologies and services should remain free of needless regulatory oversight. Yet they concurrently recognize that there is a stark difference between such restraints, and the core industry responsibilities that have and will continue to ensure we have a ubiquitous telecommunications system that is capable of protecting our national and economic security. We will settle for nothing less.

### **The Rural Spirit**

During the course of the past decade, the telecommunications industry has confronted nearly unfathomable technological change. Yet without exception, the Nation's small rural community based telecommunications providers, that are representative of NTCA's members, have always been at the forefront of aggressively embracing and deploying new technologies and services.

It still regularly comes as a surprise to most people to learn that it was a small rural LEC in Pennsylvania, in June of 1979 that placed in service the first commercial fiber optic telephone system in the Nation. That feat is representative of our segment of the industry. We led the transition to digital switching and actually completed the job well ahead of the rest of the industry. Likewise, we got into the cable TV business years ago because no one else would serve our rural communities. The same goes for the satellite television business. We led the way 15 years ago in the migration to distance learning and telehealth applications. We partnered and have tried to persist in wireless endeavors despite tremendous uphill battles with the FCC and the industry members with the deepest pockets. We ran headlong into the business of Internet provision. And we have engaged ourselves in the business of long distance whether through resell or other partnerships. While others have developed a long history of making grand pronouncement on the Washington luncheon circuit, we have been silently plodding ahead doing what we do best—serving our communities.

Now we find ourselves at yet another crossroads. Again we find competitors old and new, policymakers, and others endlessly proclaiming that the law as it exists today is broken. We are told over and over that the law is incapable of meeting the technological necessities of the era in which we live—that it doesn't allow innovation, and subsequently hurts consumers. I think our record, outlined above, speaks to the contrary. Certainly, we do not dispute that the law could be better written. But our refrain is that such modifications will help us do even more for our consumers by ensuring that scarce resources are used in the wisest possible manner.

### **Critical Nature of Cost Recovery**

From our perspective, perhaps the single most important area that congress could provide help on is ensuring that we recover our costs. It's no secret that the ability to fully recover costs is the very lifeblood of small rural LECs. Thus, of particular concern to us today are the many regulatory and judicial proceedings that will either sustain or destroy this ability—and subsequently continued investment in rural telecommunications infrastructure.

Any adjustment to one of the three components of our cost recovery—the local rate, intercarrier compensation such as access charges, and universal service—requires the inverse adjustment of the others. Not surprisingly, the local rate component is the least able to tolerate increased pressure. Already rural rate payers face higher monthly charges for access to fewer local numbers. Conversely, the intercarrier component is the one most susceptible to regulatory and competitive oriented pressures. This leaves universal service as the most likely to contend with cost recovery fluctuations. And despite its history of strength, we fear that at this time, it is ill prepared to take on such added burden.

Specifically, today small rural providers are faced with an FCC, and an industry dominated by large carriers, that are bent on moving access charges—legitimate forms of compensation for the use of a carriers facilities and a longstanding principle of capitalism—to a zero cost basis. We do not dispute that access charges in their current per/minute form may be unsustainable. However, we do dispute the contention by these parties that we are not entitled to legitimate compensation for the use of our facilities.

Indeed, the bill and keep regime they are advocating will not work for rural carriers. NTCA recently conducted an extensive data request of its members and found that moving to this approach would cost rural carriers in excess of \$2 billion annu-

ally. Moving in this direction will not help build or maintain the telecommunications infrastructure that is necessary to our economic and national security.

It has been asked why this shortfall couldn't simply be made up through the USF. There are a variety of reasons. Today, the states, and the FCC are granting USF etc status to competitors at an alarming pace and under rules that result in competitors receiving inflated support levels that are based upon the incumbents' costs rather than their own as the law requires. The Federal State Joint Board on universal service has chosen to ignore such issues for now and instead suggest limiting support only to primary lines. How will that build infrastructure? Nevertheless, as desperately as those issues need our attention, there is an even more critical facet of the program that requires attention—its contribution methodology.

#### **Universal Service Contribution Methodology**

We have all heard a great deal of discussion about the virtues of moving away from the universal service system's current revenues based assessment methodology toward a numbers or connections based approach. We contend moving in this direction would be a mistake. The problem with these alternative approaches are that they dramatically shift the responsibility of paying for universal service onto incumbent and competitive local exchange carriers and wireless carriers, while relieving long distance and other types of providers of such responsibilities. The impact of the flat-fee nature of these approaches would be particularly harsh on low-volume users such as rural and elderly credential consumers. In addition, we contend the revenues approach is the best suited to ensuring that all those that should be participating in this responsibility are indeed doing so.

We do go two steps further however with regard to our advocacy of the revenues approach. First, we also believe the law should be changed to allow not just a provider's interexchange and international revenues to be assessed for these purposes, but also their intrastate revenues. The major reason for this is that too many carriers today are manipulating their way out of fully complying with their universal service responsibilities by reclassifying interstate revenues as intrastate in nature and thus making them inaccessible. The expanded revenues approach also helps lower the overall universal service responsibility of any one carrier, and will help sustain the fund for the long-term. Second, we advocate expanding the base of providers whose revenues are assessed so that many of those that are not being so assessed today would become participants in this national responsibility.

#### **The Future of Our Industry**

We have registered our views both in the state and Federal regulatory arenas. And in many cases we have done so with the judiciary as well. Yet, we now believe it is time for congress to weigh in on these matters. We are hopeful that with your direction, policymakers, the judiciary, the public, and competitors alike, will be guided by the principle that USF is a valuable, yet scarce, national resource. Congress has the ultimate authority and responsibility to ensure that the USF is carefully managed in order to best serve the public interest. And now is the appropriate time for Congress to reassert its intent with regard to this program. NTCA and others have particular ideas regarding the future of this program, which center around the issues just noted. We will be looking to you for help in arriving at legislative solutions that will ultimately accomplish these objectives.

Despite what you have heard from some of the other witnesses during this hearing series, it is clear that universal service must remain the hallmark of our national telecommunications policy. We have built and will continue to maintain a system of telecommunications infrastructure that is ubiquitous and integrated regardless of whether it is voice, video, or data oriented or a combination thereof. And it should be particularly evident that this support system will only work if it remains carrier oriented in terms of how support is distributed. After all, it is a tool that is designed to build and maintain telecommunications infrastructure, not to serve as a consumer welfare program as some have suggested to this panel.

In addition, contrary to what most people have been led to believe today, the new technologies of this era are not free. In fact, the only reason they appear so is because they are riding on the underlying network that has been built by the likes of CTTC. We must maintain this critical element of our ability to adequately recover our costs.

#### **Conclusion**

If the Committee arrives at no other conclusion from these sorts of deliberations I would urge you to take away this thought above all else. We are fast moving away from a voice dominated network orientation. Concurrently we are engaging in and making use of a variety of forms of communications at a rapidly increasing pace and in ways upon which we are increasingly reliant. Our nation today views all of these

as necessities, not luxuries. Consequently, we will need to maintain infrastructure no matter what form such communications ultimately take. Universal service will be necessary to accomplish this. It is not a tool to be used to incite artificial competition, nor is it a responsibility to be escaped. It is a policy and program to ensure the existence of a nationwide ubiquitous telecommunications network—a network that has been proven again and again to be so critical to our national and economic security. Congress must continue to ensure that the underlying principles of this long-standing national policy are faithfully adhered to now and in the future. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Seidenberg.

Mr. SEIDENBERG. Yes, sir.

The CHAIRMAN. Last Friday an article in the *L.A. Times* reported, quote: “Reversing their long-held disdain for the competitors that lease Bell networks and equipment to provide local phone service, some of the Bells now want to bind rivals to those facilities and prevent them from installing their own gear. SBC Chairman Whittaker Junior has argued that leasing the entire platform of services ‘is not real competition’ and that the industry needs, among other things, ‘real facilities-based competition.’”

“But in SBC’s negotiations for a lease deal with Talk America Holdings Corporation, sources said SBC is proposing a requirement that the small Virginia-based firm use SBC’s network for nearly all of its phone traffic, discouraging it from installing its own equipment and preventing it from leasing from other providers. MCI said it faced a similar demand last fall from Verizon Communications in talks that have since halted.”

In your negotiations with your competitors over the use of Verizon’s facilities, has Verizon demanded that they commit to staying on Verizon’s network?

Mr. SEIDENBERG. No, sir, we have not done that.

The CHAIRMAN. You have not done that?

Mr. SEIDENBERG. No. I think what happens in these negotiations is that the longer they agree to stay on the network the lower price they get. So if you have a contract that runs 7 years you will get a price, if the contract runs 3 you will get a slightly higher price. Of course, the carriers want the 7-year price for one day.

I think—let me just shed some light on this for a second. We believe that a good wholesale regime is very important. Let us take the simple example. Wireless companies every day terminate calls on landline phones. That is a form of interconnection, it is a form of wholesale interconnection. They are willing to pay fair rates for it. We are willing to give them volume discounts.

Now, the article you talk about is specifically geared to the IXC’s and some of the smaller CLEC’s that are looking for a continuation of the past practices of regulators forcing us to give these services away at below cost. So our view is we want them on our network; all we want them to do is pay the going rate.

The CHAIRMAN. In your written testimony, and other witnesses have mentioned the same thing, that the average household in South Korea has more bandwidth than the average American business. Countries like Japan are deploying more fiber in their local networks than we are. We have had testimony before this committee on broadband; we are tenth or eleventh or somewhere around there in the world.

Your comments suggest that we should emulate whatever public policies these countries have employed. What specific policies—and I will expand this question to Mr. Roberts and Mr. Ford and Mr. Betty. What specific policies from these countries should we consider if we are falling behind?

Mr. SEIDENBERG. We would be the last to suggest that we follow what they are doing in South Korea or Norway. But I would say this, that all of these countries have a consistency of their policy that drives investment in a fashion that is fair and balanced. What we have here is a well developed cable industry, we have a well developed wireless industry, we have a well developed telecom industry. I do not think we need to copy any model of any company, other than go to the principles under which they operate, which is they incent investment, they allow the companies to get a return on that investment, and they do not require unbundling.

What you will find in all ten countries that are on the list before us is no one is requiring anybody to give away their facilities at below-cost rates to competitors in the name of simulated competition.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. I would say that I think that we are in a lot better shape than people would suggest by looking at how fast the cable industry, a business I am familiar with—

The CHAIRMAN. Let me just interrupt a second. There is numerous testimony of witnesses we are falling way behind, we are tenth or eleventh or twentieth or something, we better do something quick.

Mr. ROBERTS. I do not know that that is true.

The CHAIRMAN. Apparently neither Mr. Seidenberg or you feel that there is any need for any drastic change in policy?

Mr. ROBERTS. Well, that, I would agree with that last statement. I would say that my industry—cable modems were invented in 1996–97. We went to one conference, just to give you an anecdote, where Andy Grove of Intel stood up and said: I do not think a cable modem can work. And there was a trillion dollars literally of investment capital in the room when he made that statement.

So this is risk-based investment with ideas that nobody ever predicted. And I agree with the testimony earlier that it is hard to know how fast the world keeps changing and to make accurate predictions. But I believe the fastest growing part of Comcast is our high-speed Internet business. So we do not need any more incentive than that to try to get out and make that business happen, not because Korea is doing better or worse by some standard that may or may not be exactly accurate.

I think it is a great opportunity, and regulatory stability is what allows the capital spending that I was referring to having tripled on an annual basis for an entire industry.

The CHAIRMAN. Mr. Ford?

Mr. FORD. Well, I think it would be easy to echo what both of them said. I think what you hear and I would agree with is you will get more broadband deployment because every time the cable company deploys broadband they are eating into the telephone service revenue potential. Every time the telephone company deploys broadband that is a high enough speed to deliver video, they



are eating into the traditional video business. They will compete with each other—we have to compete with both of them in different markets. They will compete with each other when they both are free to invest.

The issue right now is in wireless—the technology is not mature enough to offer video wirelessly yet. We are working hard to try and make that a reality over the next several years, but it is not in the next 3 to 5. But the cable guys, where we compete with Mr. Roberts' company he is free to invest and he is done once he has put his fiber in the ground. And when we put our fiber in the ground, we are only beginning because then we get—I can tell you a lot more about what Nebraska and Kentucky are doing than South Korea or Japan.

But each one of those States then starts to want to take our network back apart individually for their particular view of what they think the world should look like. So our answer to that is, well, then we just will not invest, and we cannot.

The CHAIRMAN. Good.

Mr. Betty, real quick.

Mr. BETTY. I do not think the United States has as big a problem as people think. Japan and Korea have some unique circumstances of a lot of people located in a very small area and it makes the capital that is deployed much more effective. I do think that not providing consumer choice does impact the ultimate deployment.

We heard a lot about the damages people incur. We lose about 50,000 customers every month to a facilities-based provider because I have nothing that I can provide them because I cannot gain access. Those are customers that we have served for a long time.

The CHAIRMAN. One fix to the 1996 Act, beginning with you, Mr. Seidenberg, quick. One fix.

Mr. SEIDENBERG. One fix?

The CHAIRMAN. What is your priority?

Mr. SEIDENBERG. Oh, definitely, definitely get rid of the entire unbundling regime and allow investment to move to the risks that they are willing to take with that.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. I do not think you need a wholesale rewrite. I think you should let it stay. But if you want to focus on one thing, I would say focus on VoIP and Internet protocol; and as I mentioned, Senator Sununu's proposed legislation, be targeted in not creating a whole long process that will perhaps destabilize a lot of businesses, but rather say, OK, what is it we are most focused on, if we want more telephony competition what are the barriers.

I think the IP technology is going to be the delivery way to get there and there is probably a legitimate conversation around that.

The CHAIRMAN. So you endorse the indecipherable Sununu legislation?

Mr. ROBERTS. No comment. No comment.

The CHAIRMAN. Mr. Ford?

Mr. FORD. Senator, I think the one thing if we could wave a magic wand, I think the one thing we would ask you to look at is, with all due respect, I know Mr. Seidenberg's company has a telecom background, I know Mr. Roberts' company has a cable

background. Out in the markets where we compete with them, they look an awful lot alike to me.

The CHAIRMAN. What is your fix?

Mr. FORD. My fix is put everybody on the same playing field and then you will get sustained competition.

The CHAIRMAN. Mr. Betty?

Mr. BETTY. I agree with Mr. Ford.

The CHAIRMAN. Mr. Wilson?

Mr. WILSON. I think from a rural carrier's perspective, maintain a strong universal service policy. That is very important to us out in the rural areas.

The CHAIRMAN. I thank the witnesses.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Mr. Seidenberg, currently all telephones, including the regional Bells, are permitted to provide long distance and local service throughout the country. What does Verizon do by way of competing with other companies, former Bell companies, in their markets for local subscribers, non-business?

Mr. SEIDENBERG. We have the largest and most successful wireless company in the country and those services clearly substitute for local services everywhere, including in our own footprint. So I think that wireless represents a facilities-based technology that easily provides customers with alternatives to spending money on local telecom services. There is not any question in my mind that wireless is the single biggest competitor to any existing incumbent for local calling that there exists in the country.

Senator LAUTENBERG. We had a question come up in New Jersey about some regulation that was being considered and Verizon said that they would pull out of a plan to invest some \$250 million in the state of New Jersey. That is a lot of muscle to be exerting, Mr. Seidenberg. What is the intent there? Is it to say that if you do not play our game we are taking away the bat and the ball and we are going home?

Verizon is not suffering from lack of opportunity or lack of profits. So why would that kind of a threat be a good business policy for either our State or the company?

Mr. SEIDENBERG. The state of New Jersey has a requirement that we lease our network for approximately \$12 a line. The average across the country is \$19. AT&T charges \$54 for its bundled services across the country and the average across the country that they pay is \$19 a month. Therefore, in the state of New Jersey, AT&T is making an extra \$7 a month for charging everybody the \$54 without returning a single nickel of that to the customers in the state of New Jersey.

Our position is we will not invest incremental capital in the state to do broadband if we are in business to support our competitors. Now, you claim this is a lot of money. It is absolutely a lot of money. I would point out, however, Senator, that for the past 5 years we may have invested \$6 or \$7 billion in the state and we have a negative return on that money in terms of how we are earning in the state.

I think the bottom line to this is we want to do broadband, we are doing it in other places, but in any jurisdiction that continues

to provide an environment in which our invested capital cannot get a reasonable return on investment we are going to slow down the investment.

Senator LAUTENBERG. You said in your testimony that you are investing some \$12 billion a year in capital investment.

Mr. SEIDENBERG. Yes, sir.

Senator LAUTENBERG. What is typically the life of the assets that you buy in that \$12 billion a year?

Mr. SEIDENBERG. It depends. Some of them are long. It could be 8 or 9 years for switches. For fiber in the ground it could be as much as 12, 15 years. The electronics are shorter periods of time.

To give you a perspective on how we think about it, wireless is very hot today, so we invest money in wireless. The investor thinks that we will get a return on our wireless investment in 6 or 7 years. For 6 or 7 years we will incur a loss until we see a positive return on net income in our wireless business.

Today there is no business model that would suggest any investment in the wireline business has any positive return ever. But we have been willing to do it, on the theory that we think we can remake our business and turn this regulatory quagmire around. If we cannot turn the regulatory quagmire around, then focus is going to continue to be shifted away from the wireline business.

If I just may give you a couple of facts, because I know you hear all these numbers about investment. In the past 4 years, we have cut our telco investment by 50 percent. So it used to be running at \$12 billion a year just in the telco. It is now running a little bit over \$6 billion in that time period. Our employment, we used to employ 240,000 people in our telco. We are down to 140,000.

Senator LAUTENBERG. Is that technologically created?

Mr. SEIDENBERG. Some of it is. Some of it is technologically created, as it was said before.

But here is the issue. Unless we invest in new technologies and recreate growth, all we are doing is heading down a path of going to zero. I think our view is broadband gives us a chance to recreate an industry around a new technology. Government policy, particularly regulatory policy, we think is frustrating that entire opportunity.

Senator LAUTENBERG. You can see that by the results of growth in your company, with all of these regulated years that you are complaining about. The progress of the company is incredible.

I wish that you and I could sit over my phone bill. I am a New Jersey resident and I would like to examine what we get, how much less we seem to get for the money we are spending.

Mr. SEIDENBERG. Senator, any time you want to look at our balance sheet, I think you will find that we have not grown over the last 4 or 5 years, that we do not get a return on our investment. The fact that you use our services I appreciate. I think it is a good thing.

The CHAIRMAN. I would like you to explain my phone bill to me just so I could understand it.

Mr. SEIDENBERG. Just pay it. Just pay it.

Senator LAUTENBERG. I come out of the computer industry, Mr. Chairman.

Mr. SEIDENBERG. It is one of the best values you will ever get, Senator.

Senator LAUTENBERG. Mr. Roberts, what do you think about the negotiations between the Bell companies and the competitive carriers in the wake of the D.C. Circuit decision?

Mr. ROBERTS. Well, I was enjoying the previous exchange.

[Laughter.]

Senator LAUTENBERG. But I get a chance at you, too.

Mr. ROBERTS. I think regulating the Internet, which if you boil it all down is what is at stake—and I am in the camp that you should look at what is the end goal and I think it is to promote competition and have multiple facilities-based providers.

The comment that was made that the telephone companies are now selling more DSL's than the cable companies in the last quarter is a true statement, and that is the first time that happened. That did not happen for any other reason than, as I said earlier to Senator McCain, that I believe it is a good business and that is what the consumer wants and you are racing to get the consumer what they want. The same thing in wireless.

So to turn around and take a law that was passed 70 years ago and apply it to an Internet-based product, high-speed Internet and broadband, does not seem to make sense to me. The FCC recognized that and hopefully the Supreme Court will recognize that, because I think whether you are talking wireless technologies, cable technologies, or power line technologies or whatever, I do not think you want to go back in time.

If need be, take a look at the rules that still apply to others and try to take some rules off. Do not put new rules on in the name of trying to promote competition. I do not think it proves that that will work.

The CHAIRMAN. Thank you.

Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

My key concern here and view is that we need to make sure broadband is more available to more people. It benefits consumers, encourages innovation, and it stimulates jobs and economic growth and clearly individual opportunity for consumers, particularly in small towns and rural areas, for those businesses, individuals, whether they are in schools or telemedicine, in a variety of ways—distance learning and so forth.

I think that to worry about the telephone aspect is secondary to broadband because the applications are way more than e-mail and instant messaging, and it is more even than telephone. It is video. It will get competition against the cable, so to speak, but give consumers more choices in it. Again, it is not just cable modem and DSL; it is ultra-wideband, it is the power lines, it is satellites, wi-fi, and so forth.

Now, we recently passed the Internet Tax Freedom Act extending the Internet tax moratorium, and most of you supported that effort and I appreciate it. Can you tell me what you think the impact of taxing the Internet would have on the deployment of broadband by your company? We could go through all of you, to the extent you all in one way or another are involved in broadband. Start with you, Mr. Seidenberg.

Mr. SEIDENBERG. Well, in addition to it being a bad idea, taxing the Internet, I think I will come back to my theme. I think it will take all or most business risk associated with wanting to invest in new technologies and frustrate it.

I think that you have a hard job in terms of public policy. You can get revenues into the treasury by creating growth or you can tax it. I think if we tax it we are not going to get the growth. So I think in this case I err on the side of wanting to see capital formation, continue to have people invest, all the services that you talk about will occur. And investors will flee from this market in a nanosecond if they feel the heavy hand of taxation enters the success formula for these kinds of services.

Senator ALLEN. Mr. Roberts, while you are not considered by the ones who want to tax it a telecommunications company, which gave you an advantage over some of those States that looked at loopholes and taxed DSL, one thing we do not want, at least I do not want, is an Internet service bill, monthly bill, to look like the telephone bill that Senator McCain and no one can understand, with the multiple State taxes, local taxes, and Federal taxes, including a luxury tax put on to finance the Spanish-American War that remains there.

What would the impact of taxation be on you? And Mr. Ford, Mr. Betty, and Mr. Wilson.

Mr. ROBERTS. Well, first of all, we do have local franchise fees, so there are taxes at stake in this debate as well, because a cable operator gives 5 percent of their revenue to the local municipality, depending on how you define what the service is.

Senator ALLEN. Right, but not in Internet service.

Mr. ROBERTS. In the past there has been some municipalities that have wanted that, and so that is part of the question. I think when you create a tax in something that is growing like this, you are obviously going to depress demand. If you go back to what Chairman McCain said or what the President said, should we not be thinking about growing the appetite, not depressing the appetite?

I would agree with what Mr. Seidenberg said, that I do not think that is in any way going to help grow demand, and I think that is better for the Nation as a policy.

Senator ALLEN. Mr. Ford?

Mr. FORD. Well, sir, one comment would be we pay—I did not realize until the last few weeks when all the articles starting coming out, we pay 6 to \$700 million in State and Federal taxes. I did not know we were in such a minority in just the Nation as a whole.

But one of our primary competitors that is trying to sell service promotes having a \$10 cheaper price for a similar bundle of voice services. That is because they have about \$8.50 of less taxes, fees, surcharges, and etcetera on the bill. So again, it is maybe not just the question of do you tax the Internet and how you take that into State tax revenues and balance that, but one set of competitors are being taxed, one set of competitors are not being taxed. Again, I think that is worthy of looking at as you go through your review of this.

Senator ALLEN. Mr. Betty.

Mr. BETTY. Taxes clearly would have the effect of dampening demand. It would make it unaffordable for even that many more Americans.

Senator ALLEN. Thank you.

Mr. Wilson.

Mr. WILSON. Senator Allen, when I go back and think about our rural cooperative, when we deployed the Internet back in 1996 and I talked to many of the people when they took the service, we have over 3,000 dialup subscribers and around 300 DSL subscribers. To be frankly honest with you, whether it had been taxed or not I think would have had little impact upon people wanting the service. They wanted the service, they needed the service bad.

Senator ALLEN. What would—beyond the issue of taxation, if each of you could say this. Beyond the issue of taxation, what is the key issue facing your company preventing further deployment of broadband services? We will go in the same order.

Mr. SEIDENBERG. I will just give two things. I think, as Senator McCain said earlier, I think in our case requiring the FCC to implement the court rules without all these silly pricing distortions; and treating adjacent industries the same. I think the theme comes out here that—and I did not make this point, make it a point to come here this morning to comment on this, but there is no question that the cable industry, with all its success, has a different set of rules than we have, and in some cases we provide exactly the same service.

The CHAIRMAN. And different kind of taxes.

Mr. SEIDENBERG. Absolutely. Now, I am not suggesting that they are doing anything that is not good. They are taking advantage of an opportunity. But the issue is we cannot go downstream and have a different set of rules for us and for the cable. It is not sustainable.

Senator ALLEN. Mr. Roberts?

Mr. ROBERTS. Well, first of all let me just comment on that last part. If you take the video business, one out of every four homes now buy their video products from somebody other than their cable company. There has been several laws about video competition. You have two national competitors. We are not in the satellite business, really not allowed in the satellite business. The biggest competitor to telephone is wireless.

Senator ALLEN. I do not want to get in that whole debate.

Mr. ROBERTS. OK, no problem.

Senator ALLEN. I understand there is competition. What is the biggest and key impediment to you all?

Mr. ROBERTS. The biggest impediment would be regulatory instability, and in our case that is here and now and immediate, which would be the so-called Brand X case which Senator Lautenberg was referring to is under review. The question is whether they are going to appeal it to the Supreme Court, the FCC's rulemaking.

Senator ALLEN. So you are saying legal uncertainty?

Mr. ROBERTS. Legal uncertainty.

Senator ALLEN. All right. Mr. Ford?

Mr. FORD. Mr. Allen, I have to say that it is regulatory uncertainty as well. The technological advances are hard enough to forecast. We struggle with it every day. But when we do not know

what regulatory scheme we would be making that capital investment decision, the only decision we can make is not to push.

Senator ALLEN. Mr. Betty?

Mr. BETTY. Nondiscriminatory open access to the infrastructure.

Senator ALLEN. I know we could have a good debate with you and Mr. Seidenberg on that one.

Mr. Wilson.

Mr. WILSON. As a rural carrier, it would have to be regulatory instability, too. We need a stable environment of investment recovery so we can build that broadband out in rural America. I think it will bring untold opportunities to many of our subscribers.

Senator ALLEN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

If we move forward on a goal that I would like to see of helping consumers and a regulatory environment without hampering technological innovation, something that would also allow wireless broadband to be rolled out quickly, and ensuring that all Americans have access to this kind of technological innovation, so with that in mind, which is one of my goals, Mr. Betty, suggest to us how you think we could redesign the laws, the telecommunications laws, so that they do not become outmoded by the new technological innovations?

Mr. BETTY. Well, that is a tough question. I mean, IP fundamentally is changing how things are delivered. I think Scott talked about the view that it is going to be applications that people are buying, not necessarily the service. That genie is out of the bottle. It is not going to change. And IP is going to be delivered by a number of different infrastructures.

If the Congress decides that access needs to be provided for everyone, I do not see how anything but some subsidization is the only way to fund cost effectively the delivery of those services to many of the rural areas. But I do not think providing a framework where you are limiting or setting up a duopoly of interests or having only a couple of people that can provide those services is for the public good. Whatever you do, I would suggest that you provide a framework that takes these public, somewhat public, infrastructures and makes it available to other third parties.

Senator NELSON. Mr. Roberts, you have thrived in the cable industry since the 1996 Act, in part because of being relieved of many of the regulatory restraints. Now, the wireless industry is also minimally regulated. Should the incumbent local telephone providers be similarly deregulated?

Mr. ROBERTS. Well, if the choice is that versus regulating others, then I would say yes. I do not consider myself an expert on all the machinations, and I did not mean to get us in with Senator Allen's question, but I think you do have to look at who are the largest wireless companies in America. They are the telephone companies. In the case of our industry, the satellite companies are not owned by the cable companies.

So you do have—it is simple to say, oh, just have one set of rules for everybody. I do not think that is necessarily totally realistic. We have local municipalities that regulate our business, other busi-

nesses have different regulations. So I think what you should be doing is looking at the end user and saying, how can we promote more and more competition and thoughtfully take rules off of people that are no longer necessary.

I do not know that I know every rule affecting the local telephone companies. But if the answer in the name of parity is to put more regulation on, then I have a very strong point of view. If the question is should you take regulation off, I think it is a question that should be thoughtfully revisited, and there are many witnesses and I think you are doing the right process to ask those questions.

Senator NELSON. Mr. Seidenberg, you are negotiating interconnection agreements with competitors over the use of their networks. How would you characterize the progress that is made thus far?

Mr. SEIDENBERG. Well, it has only been 2 or 3 weeks. I think the progress is fine. I would prefer that we call them customers because they are customers. They spend a lot of money with us. And we do—we have had interconnection agreements with most of them for the last 25 years.

What we need to do here is find the right balance between a fair price to be paid for the facilities and the services that we offer. We have negotiations going on with close to 20 different carriers right now. Most of those carriers feel that they would like to cut an individual deal with our company because each of them has built differentiation in their company, and we would like to accommodate that by giving them whatever it is that they feel would be reasonable under the law.

So I am very pleased that the discussions are ongoing and active, and we should end up with some good results over the next several weeks.

Senator NELSON. You think those interconnection agreements should be filed with the government?

Mr. SEIDENBERG. This is a difficult question. I think my instinct is the following. We were asked to settle this commercially. I think my concern would go to, if we cut a deal with you, sir, should we take all of your intellectual property and make it available to Senator Sununu? This is what happens in the regulatory process. So you go through this very tortuous process to treat customers as individuals, only to find out that every term and condition of every single contract is spread across the entire industry.

So I think we want to follow the commitments we have made, which is to do bilateral agreements, cut these deals with these major customers, and go forward on the basis that will keep the information confidential.

Senator NELSON. Mr. Ford, should Congress consider amending the Act to support wireless or broadband applications to permit universal service funding instead of just supporting only the basic voice applications?

Mr. FORD. That is a deep set of issues. I could probably make money if I said yes and you did it, but I do not know that that would be the right policy. I think that there is plenty of money in the pools. We are a rural telephone company. We take out about 100, we take out about \$150 million from the State and Federal pools; we pay in about \$100 million.



There are plenty of pools to incent lifeline support, whether it be wireline or wireless. There has been an interesting evolution on that topic in the last couple of years, and I think a reasonably fair one.

Do we need to go and incent that for the delivery of broadband in rural America? We probably will not build out extreme rural America with wireless broadband in the first few years, but I think the technological progress that is being made will allow us to get there over the next 10 years without having to introduce a new Federal subsidy or a new State subsidy.

So while I would profit if you did that and I will avail our company of that revenue stream if you decide to do that, I do not know that that is essential long-term.

Senator LOTT [presiding]. Senator Allen—no, I am sorry. Senator Ensign.

**STATEMENT OF HON. JOHN ENSIGN,  
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. Thank you, Mr. Chairman.

I want to delve a little deeper on this topic. Senator Allen talked about taxation. Well, another tax is regulation, and you all are operating not only nationally but even internationally. So I would like your comments on how, because this is definitely one of our roles, in terms of regulating interstate commerce, when do we preempt States; and for the deployment of broadband, getting more broadband out there, making it more competitive, as Senator McCain talked about in regards to Korea and Japan.

Can you comment on that aspect of the States appropriate role and the difficulties of having different laws in each state you think that affects broadband deployment, pricing, and the like? This might be something most of the panel at least can agree on. Just start down the line.

Mr. SEIDENBERG. You want me to start?

Senator ENSIGN. Yes.

Mr. SEIDENBERG. OK, fair enough. Maybe I could just quickly offer why it is time to take up the questions you just mentioned. If we believe the technology, we now have services that are more national in scope rather than local. Let us take the example of wireless for a second. The U.S. was criticized because we had multiple standards, CDMA and GSM. Europe created one technical standard across Europe. They had faster deployment of wireless in Europe.

Now let us take a look at the phone situation or the telecom situation in the U.S. We have 53 jurisdictions setting prices, setting terms and conditions. We have the FCC setting terms and conditions. We have heard here that when you deploy networks you have IP protocols and packet switching that create national formats.

I think if we do not eliminate the unintended consequences of having 53 different statutes regulating different aspects of this, trying to divide a chip on a device and trying to allocate costs, we are going to continue to disadvantage the formation of broadband networks. So I think it is time for the Congress, the FCC—most state

commissions will not like me, will not appreciate this, but time to preempt it, cut across the top and create uniform standards.

You have heard this before, but we need common rules for enforcement, technical standards, public safety; we do not need economic regulation of prices. We do not have it in wireless, we do not have it in cable. It works. And we need policy that provides stability and uniformity across the country. It is time we did that.

Senator ENSIGN. Thank you.

Mr. ROBERTS. I think you are right, I think we will probably have a lot of agreement on this point. I also think pointing out that regulation is another form of tax is exactly right. Without a doubt, as we look to the daunting challenge of going into the phone business and all the interconnection rules and all the myriad of consumer necessities that are the phone business if you really want to be a primary line company, which is what our goal to offer the service is, having preemption of 53 or whatever State rules is critical.

It happened in 1996 and that is a big part of why high-speed Internet took off. There is one set of broadband policies that are under judicial review and so that is part of my concern. I think doing it again for VoIP makes an awful lot of sense.

Mr. FORD. I would agree completely on the wireline side. The wireless industry, this has been one of the primary issues we have dealt with in the wireless industry the last few years, as one State after another wants to come in and start—they do not want to regulate price. They cannot. But the terms and conditions becomes an ever-expanding room for them in terms of their view of what they need to regulate, including in one State what font size various parts of our ads should be.

There was another State where we passed on an acquisition because part of it did business in one State where we knew the regulatory burden would not pay for us to even have the operations in the State. So it is a real issue.

Mr. BETTY. I agree with the other panelists.

Mr. WILSON. I guess mine would be just a little bit different. I do not have the experience of all these other States, but I can tell you in the rural areas that we serve, for DSL broadband type services to remain regulated to receive a rate of return is imperative for us to be able to get this stuff out there.

There has been quite a bit of rhetoric over the last year or so about deregulating these information services, and if so, if there is no rate of return, for us as rural carriers we are probably as far as we are going to be able to go. We definitely need the help from rate of return regulation to deploy this stuff.

Senator ENSIGN. Just to go a little further along these lines to get into the Voice-Over-IP: taxation, obviously at the local level and regulation. There is a lot of promising work in the Sununu bill and I think it is one of the most important technologies that we allow to develop, and I say “allow to develop” because it is developing. This body up here can mess it up.

That is kind of the bottom line, is how do we get out of the way so that it does develop in a way that I think is going to revolutionize the way that people send and receive information in their homes and their businesses. So please offer your comments on,

once again, the State and local preemption of taxes and regulation that would apply to this particular technology that is dependent broadband?

Mr. SEIDENBERG. I have the feeling that I was just given a pass in open court and no one between me and the basket and I cannot lay it up. I apologize.

I would say this. I think that from all these years of participating in this industry, there is a gravity of regulators, of regulatory thinking, that will not let go of the old in order to try the new. It does not mean that they are doing anything wrong. They are following what they view as the statutes.

I think it is time for the Congress to change the statutes, so you change the job. If you change the job, they will change the behavior. I think what we are facing is, if you look at wireless—I can speak from that because of our experience—we started a wireless business from almost nothing, just a few licenses. We have a national company. Arguably we have the superior asset in the entire industry, and it is based on investment. We have invested more per customer than anybody else in the industry. We have the best service, the best coverage, the best distribution.

I think the same thing has to occur on the wireline side. So we have to trust the market. We have to believe that the market is competitive enough at this juncture.

Now, having said that, I am not a person that believes that we just obliterate all regulatory responsibilities. Somebody has to be the referee, somebody has to enforce, somebody has to set standards, somebody has to make sure it is uniform, there is non-discrimination. I think there is a legitimate role for regulatory work, but it needs to shift away from micromanaging price and winners and losers to regulating the terms and conditions of market behavior.

Senator ENSIGN. Thank you.

Mr. ROBERTS. Well, I concur with a lot of that and I think it goes back to is the glass half full or half empty approach to what you are trying to accomplish and recognizing that this is changing. So in our company we are taking three cities this year and we are rolling out Voice-Over-IP. Again, the technology changes every day. We are thinking should we go into videophone, should we just go into voice? Should an Internet connect with your TV or should it be a stand-alone device? How does it relate to wireless?

These are all questions that I cannot sit here today and tell you that we know until we go do it. I totally agree that it is about innovation and investment, and we are fully committed to taking our cash-flow and putting it back in and hoping that we are going to develop products where we can compete.

In order for the government to support that and, as you say, get out of the way and not slow it down, I think the best thing you can do is to look at the existing regulatory regimes—in the telephony case that is clearly the States—and it is to recognize that any tax will slow this down or any regulation will slow this down, and have a stable platform, because Wall Street, which all of our companies basically or most of our companies have to answer to, wants to put their investment where they know there is not going to be

a change 12 months later and suddenly your investment is wiped out.

Senator LOTT. Anybody want to add to that?

[No response.]

Senator LOTT. Senator Breaux.

**STATEMENT OF HON. JOHN BREAUx,  
U.S. SENATOR FROM LOUISIANA**

Senator BREAUx. I am sorry, I have my Verizon Blackberry here. Thank you, Mr. Chairman.

I think it is really important that we are doing what we are doing. If you think about Congress, we are so far behind technology in the laws that we pass. We passed the 1934 Telecommunications Act. We came around in 1996 and passed an update 62 years after the first one. And then now it is arguable that what we did in 1996 has little relation to the technology that exists today.

I mean, if you look at where we are going, just check the teenagers in this country as they move around on their Blackberries and their wireless telephones. I mean, these kids do not even use a wireline any more and probably will never use it in the future. And you look at e-mail and instant messages and broadband. Really, none of that was very common when we passed and debated the 1996 Act.

So it is incredibly important that the next Congress, that I will not be part of, uses this opportunity to try and once again bring the laws regulating this industry into the modern world in which technology prevails. There is a disconnect between the 1996 Act now and what is needed in the year 2004 and into the future. So it is really important, I think, that we have taken this opportunity to set the stage for next year to come in with legislation that addresses the new technologies so we can try and keep up with the laws, with the technology that is out there.

Mr. Roberts, Mr. Seidenberg, and maybe if someone else would comment, it seems to me that what we did in 1996 was extremely regulatory in the sense of the RBOC's and the requirements that Mr. Roberts and his cable companies do not have those same standards. I think Mr. Roberts' response I think is correct, but I will get you to elaborate on it.

Currently the regulations on the RBOC's, Mr. Seidenberg's company, in comparison to what is there for the cable companies, there is a huge difference. I mean, the cable companies do not have to negotiate with your competitors for access to your network, you have no duty to interconnect with your competitors, sometimes at below cost, you have no duty to follow a detailed system of regulatory accounting, no duty to file tariffs, no duty to provide network ISP service, and others.

But I would think, Mr. Roberts, that what you are suggesting is, rather than let Congress come in and provide these same regulations to you that you have on Mr. Seidenberg's companies, that the preferable answer would be to create a level playing field which moves toward deregulation in this area, as opposed to more regulations. Can you comment on that?

Mr. ROBERTS. Yes, I think that is right. I think that, in fairness, there are other regulations on cable, and in fairness there are other

competitors in, quote, our “core business,” the video business, that in Mr. Seidenberg’s core business that there are people at this table, not at this table, who would say, well, here is why there should be a difference. And you can have that intellectual debate.

But I think ultimately, if the policy of is broadband going fast enough in this country, to thoughtfully go back and look at issues as he described in New Jersey or wherever that are retarding their advancement are legitimate to revisit. And there may be—again, it is a nice goal to say let us have exactly the same rules for all parties. But in the end, last quarter there were more DSL’s sold in this country than cable modems.

Senator BREAU. Yes, but you are so far ahead. I mean, they could have a good quarter, they have got a hell of a lot of making up to do to come close to catching up with cable.

Mr. ROBERTS. Again, so part of that is—

Senator BREAU. You have got what, 25 million subscribers? They have got 16?

Mr. ROBERTS. I think it is a little higher, but I think that conceptually we would not argue we did better, because I think we recognized that this was a business a little faster, and that is good for competition.

Senator BREAU. Yes, but you also did not have all the regulations that Mr. Seidenberg had.

Mr. ROBERTS. That may be part of the answer, and I think that is worth taking a look at.

Senator BREAU. Mr. Ford, you have a comment on this?

Mr. FORD. I think you have got it square.

Senator BREAU. Mr. Seidenberg, do you want to elaborate? Maybe this is another jump shot for you.

Mr. SEIDENBERG. I would just make, I would just like to—Senator, you have been working these issues a long time. I know you understand this. I think that this whole issue of DSL and cable modem would suggest there is a lot of competition. Regardless of who is on top, the fact is we compete every day. Cable does a good job. We are trying to do a better job. We happened to have one good quarter out of the last 30, so I guess it does not mean we are on a winning streak. But that is fine.

But I think the other point that I would like to just offer you is, what makes this different today is that there are no boundaries to separate voice from high-speed from video. As these industries come together—Senator, you asked a question before about applications and the software industry. If we do not begin to treat these technologies as they serve the myriad of applications across these technologies, we are going to continue to suboptimize the process.

I think that is the reason why we need to cut across the regulatory structure and obliterate those things that draw us to the past and try to create something that is more level going forward.

Senator BREAU. Well, I may be hoping for the impossible, but it would be so incredibly positive if the industry itself could look at this in a way without getting into problems with antitrust, to make recommendations to the next Congress as to how this should be handled. You have been through the battles and had TV ads ad infinitum from both sides talking about what we should do and

what we should not do. If as much time was spent on trying to present a united recommendation, it would be incredibly helpful.

I believe in regulation when there is no competition. If there is a monopoly, there should be regulation. But you need a lot less regulation when there is true competition, because the competitive system can work, but it can only work if you have in fact competitors. I think that we are moving in that direction and the recommendations I think would help the next Congress a great deal to try and get together on this.

I thank all of you for your testimony.

**STATEMENT OF HON. TRENT LOTT,  
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Well, let me say, Senator Breaux, no matter what we do next year or the next, it will not be as much fun without you helping us write the legislation. You would certainly add some complication and entertainment to the process, but we are going to miss you as we try to do that.

I want to thank Senator McCain, even in his absence, for having this series of hearings. I think it is helpful to begin to frame the discussion and help us understand a little bit more about the tremendous technology changes that are under way, and we need to try to deal with it, hopefully in a positive way, in terms of what we do with the law, the regulations, legal concerns.

So I think this has turned out to be a good idea. I want to thank the panel for being here. I think you have done a very good job.

But to change things up just a little bit, I am going to start down on this end with you, Mr. Wilson. One of the things obviously that will be a key factor when we develop legislation is what do we need to do, what kind of reform should we have in the universal service fund and in the way the distributions are made that would help guarantee the stability of the fund in the future? Where can we get more money to help provide the funds?

Do you have any thoughts on either part of that question?

Mr. WILSON. Yes, sir. We at NTCA believe that the contribution base needs to be expanded, for one thing, to all telecommunications providers, also including information providers as well. We believe that the current revenue assessment base is the way to stick with. We do not really—we do not believe we need to move toward a numbers or a connection-based. That will shift a lot of the responsibility to telephone companies, to wireless providers, and to CLEC's as well, and relieving a lot of the inter-exchange carriers of their statutory responsibilities.

So yes, sir, we believe that the base should be expanded.

Senator LOTT. Mr. Seidenberg, do you have a thought on that?

Mr. SEIDENBERG. Well, yes, sir. Senator, I think universal service to us is important. I mean, all the rural customers are very important. We serve rural locations, as you know. I guess technically we are probably as large a rural provider as anybody is.

I think the issue for us is to make sure that the fund is administered correctly and is targeted. If we could do that and get the support where it belongs, to those that need it, there should not be a big objection to it. I think in the past these funds have tended to be bigger than they need to be, they tend to go to companies rather

than people. If we can sort through a way to do that, we are willing, we absolutely are going to participate and try to make it work.

Senator LOTT. Do you want to add anything to that, Mr. Roberts?

Mr. ROBERTS. One point that I think as you think about how the USF can be relevant in the future with new technological development, the very last point of whether the money is ending up in the right place I think is a fair question. So one idea, just as you are evolving ideas, is if you want to continue to take—obviously we want to participate if we are in the phone business; we do today pay into the fund—whether it should get to the user as compared to the provider. So that tends to pick winners and losers.

I do not know how you do that. I think if you have this discussion you should be thinking about, OK, the incentive is there, the question is whether it is low income or rural. What can you do to spur the demand side is again in my mind an interesting way to at least revisit the question.

Senator LOTT. I noticed in your testimony, Mr. Roberts, that you refer to the preamble of the Telecommunications Act, and what a worthy description that was. You can debate about whether or not we have achieved that goal. But my thought when we were working on that legislation in 1996 and today is we need to always keep our eye on the ultimate goal, which is to provide the customers with the best service at the best rates, with the least hassle.

I think we have made some progress in giving them tremendous options, and for the most part pretty good rates. But I still think to the average consumer it is a confused mess. I look forward to the day when I as a customer can get my television, the Internet, the telephone, the works, local, long distance, all of it from one company that I choose, so I can pay one bill. I am getting damned tired of having to pay Bell South, Verizon, AT&T, cable, and the satellite company every month. It takes half my checkbook just to pay those. Now, partially because I live in two different places.

But Mr. Roberts, since you have been very aggressive and innovative, do you envision that day? And I want it with competition. I worry that you can get all that, but I do not want it provided by one company. I want to be able to choose between at least a couple, so that I can keep a little heat on both of them to control their prices for that myriad of services.

Mr. ROBERTS. I think that is the vision. I mean, I think that is—all kidding aside, how can the various networks evolve the technology to where you are offering all the products to the consumer, whatever the definition of the products will be 5 or 10 years from now. So as you think through the model, you do want a facilities-based competitor that is willing to integrate. In the marketing lingo, that is the bundle.

And bundling, Verizon is a leader in that. Get your cellular, your telephone, your DSL, they are offering satellite, and all in one bill. Cable is doing that, and I think that that is a lot of what some customers want.

The key point that you also made, having competitive choices for all those bundles, is also happening. So in our case you can get Rupert Murdoch's DirecTV, you can get EchoStar, the Dish Network, you can get DSL. They are bundling together.

So how do you innovate? So the real thing, so if you are in our shoes, is obviously trying to have local service, be a company that is community-based. So as you know, we take great pride in the fact that we started this company locally.

Senator LOTT. In Mississippi.

Mr. ROBERTS. In Mississippi.

Senator LOTT. Do not ever forget that.

Mr. ROBERTS. I never forget it. Tupelo, Mississippi, my father.

Senator LOTT. That is what got you started off on the right note, yes.

Mr. ROBERTS. Forty years ago. So whether it is being part of the community or now doing 24-7, again, the change that you are talking about I think has happened, so we are open 7 days-a-week, 24 hours-a-day. You call, you talk to somebody from Comcast. That is a very different business model than your cable company 10 years ago.

So that is the competition part that you referred to. But I think that is a vision that we are all shooting for, which is the bundle.

Senator LOTT. Mr. Ford, my staff tells me that you indicated maybe you might want to comment on the universal service fund, go back to that.

Mr. FORD. That is an observant staff.

Well, I wanted to say one thing on that. As a rural phone company, we never quite got it right. We started in Arkansas instead of Mississippi, but that is as close as we could get.

Senator LOTT. But you do serve part of my State now.

Mr. FORD. We do, sir.

Senator LOTT. So you are making progress.

Mr. FORD. That is a crack staff you have got back there.

Just to kind of stay on my mantra today of sighting the pink elephants in the room, when you talk about universal service, as I am sure you are aware, the high cost subsidies that used to flow only to the wireline companies, whatever that subsidy was now flows to any wireless company for any number of lines in that marketplace. So the universal service fund has grown tremendously over the last several years. It is not like it is dying on the vine.

I am a beneficiary of it. But if you are looking for people in the industry that would say, look, enough of a good thing is enough, if you really want to policy where people have to compete and evolve their business models to stay competitive, I think you would find more support in the telecommunications industry than you might suspect.

Senator LOTT. Thank you very much.

Now we will hear from VoIP Sununu in person.

**STATEMENT OF HON. JOHN SUNUNU,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. Thank you very much, Mr. Substitute Chairman.

[Laughter.]

Senator SUNUNU. I want to point out that you are doing an outstanding job presiding over this hearing.

Senator LOTT. Feel free to extend your remarks in that vein.

[Laughter.]



Senator SUNUNU. One of the points that seems to have been made in a number of different forms is the importance of regulatory parity and a level playing field, and also consistency, because it is the consistency that creates an environment where people can take a risk and put up some capital, invest in a new service, new infrastructure, and keep serving those customers in Mississippi and elsewhere that are the heart and soul of your businesses.

Along those lines, Mr. Seidenberg, I think you talked about regulatory parity with regard to voice and video and data, whatever might be carried over the system. Mr. Betty, in your remarks I think you made a similar point about looking at these applications and treating them all in a similar way.

Does VoIP fit that description that you provided in your testimony, Mr. Betty, an application that rides over the Internet?

Mr. BETTY. Absolutely.

Senator SUNUNU. And do you agree that all of these applications, voice or instant messaging or video, ought to be treated as information services?

Mr. BETTY. Absolutely.

Senator SUNUNU. Mr. Seidenberg, do you agree with that?

Mr. SEIDENBERG. I am not a technical expert on the law here, so I do not want to get in trouble. But I think that to the extent that we can treat the VoIP services absent the common carrier regulation that would create a disparity with other services, then I would agree.

But I want to make sure I read the fine print because this is what I have learned in this industry after all these years. But generally we have been making the case that broadband services should not be treated under Title 2, they should be treated under Title 1.

Senator SUNUNU. Mr. Wilson, do you agree with Mr. Betty?

Mr. WILSON. No, sir, I do not. I think VoIP is another form of telecommunications and should be treated so. I look at Voice-Over-IP as just another natural evolutionary step in the innovation of telecommunications. If you go back years ago, we had the old central switchboard, we had open wire lines with a great number of people on party lines. We migrated to eight-party, to four-party, to one-party, buried copper to fiber, hybrid coaxial networks, went from step switches to digital switches, now to soft switches.

I think it is just innovation, another step in innovation in telecommunications.

Senator SUNUNU. So instant messaging, e-mail, video on demand, those are also telecommunications services that should be regulated under Title 2?

Mr. WILSON. I do not think e-mail and text messaging should be, but I think the Voice-Over-IP should be.

Senator SUNUNU. So looking out toward the future, regulators are going to have some sort of a sieve that enables them to determine which bits carry a telecommunications voice call and which bits carry an instant message and which bits carry an e-mail?

Mr. WILSON. Well, sir, I think the fact may be that we have to have some type of a network compensation for just a bit, period, because we will not be able to distinguish those bits for sure. But

still, we will have usage of our network. This stuff, it is not magically just getting from point A to point B. It is still riding over a network. We have got network investment and somehow we need to be compensated for use of our networks whether it carries VoIP or text messaging or whatever else it carries.

Senator SUNUNU. So your point is not really whether you have regulatory parity or not. It is just whether anything affects the rate of return model that your business is based on?

Mr. WILSON. Yes, sir, we just need to be compensated for our network usage.

Senator SUNUNU. I appreciate that directness.

Mr. Seidenberg, I believe the FCC has encouraged and you and others have participated in discussions around modifying the inter-carrier compensation system, moving to maybe the nirvana, or perhaps the mirage, of a bill-and-keep system. Is that realistic? Are you making any progress there? And where will that leave, if we were to move to a bill-and-keep system, where would that move folks like Mr. Wilson?

Mr. SEIDENBERG. I think there are two different questions here. Let me see if I can address the question of the rural support. I think from an inter-carrier compensation system, some progress is being made. I guess we always make progress, depending on where you sit. I think what is important to us in that whole debate is to evolve the inter-carrier compensation art form here to—"bill-and-keep" is not a bad way to say it, but, you know, to every complex solution there is a simple answer and it is usually wrong in this environment.

I think we need to move more in that direction. We need to move more in the direction of people paying for the facilities they use. Now, here is the only place that we have a very strong view on this, is that every time we get into one of these debates we find ourselves supporting other companies' bad business models. This is where you get into all the trouble in the regulatory process.

If everybody had to make a return like Comcast on their investor capital, the debates would be different. But when some companies come to the table with no stake in the game, no skin in the game because they do not invest anything, the whole discussion goes a different direction.

Senator SUNUNU. Who would that be?

Mr. SEIDENBERG. The interstate carriers and all those companies that—we know who they are. I guess we are talking about pink elephants. There is one of them around here someplace.

I think, to the other question, I think that I believe that wireless, take for example, we have expanded coverage, we have grown the market. We have moved wireless coverage further and further into the rural communities. I would not give up on the idea that the marketplace will drive coverage and we do not need rate of return guarantees in order to make sure we provide services into the rural areas.

So I think there is a balance here. We can push things out a little further through investment and growth before we get into the situation of trying to mandate these things through regulators who, frankly, it does not work. You come from a rural State. You know this.

Senator SUNUNU. I would not say that. My state, it is a mix of suburban areas who go through the hand-wringing of being included in the Boston DMA and all the problems that that can create in a number of different areas, and yes, we have got some rural areas and the issues associated with broadband access as well.

However—sorry, Mr. Chairman. Let me just be clear. You did not really answer my question, which was about moving to bill-and-keep and whether or not you thought that was a realistic goal, whether we could achieve a bill-and-keep system, and whether or not, if we did that, whether that would create a problem.

Mr. SEIDENBERG. I apologize. I mean, I think moving in that direction is right. But I want to be very careful. I want to make sure I read the fine print to make sure that somebody does not call it that and when I get finished with it it is something else, because that has been the history.

Senator SUNUNU. Thank you, Mr. Chairman.

Senator LOTT. Senator Lautenberg, would you like to pursue a couple more questions?

Senator LAUTENBERG. Yes, thank you, Mr. Chairman.

One of the things I noticed, Mr. Seidenberg, in your response to my question about how you are competing in local markets, you turned immediately to wireless. Is that because of an abandonment of the traditional opportunities that came from the wire-connected subscribers?

Mr. SEIDENBERG. No, sir. I think—and fair enough. I could have answered that question a little differently.

Senator LAUTENBERG. Do you compete for the wire-connected, the more traditional kind of phone subscriber, in other marketplaces?

Mr. SEIDENBERG. No, we do not.

Senator LAUTENBERG. OK. I just wanted to be sure, because what we are talking about here is how those companies who would like to enter into the competitive marketplace with traditional service really do not have much of a chance.

I noticed a company called Convergence Consulting estimates that 20 to 25 percent of DSL customers, the customer base, are businesses compared to only 3 percent to 4 percent for cable. Now, Mr. Roberts, do you have a view of that? Is that because you were not interested, the cable industry is not interested in the business marketplace?

Mr. ROBERTS. No, we definitely are interested. I think we see that as a future growth opportunity. But traditionally we did not have the suite of services necessary that businesses wanted. Verizon has a very successful longstanding relationship with those businesses. But I do think part of our plan as the Voice-Over-IP technology happens, I think one of the themes here is that may well be the path to real competition in phone, is through VoIP. And should that occur, then I think a lot of the other conversations we have been having today will play out, and hopefully we will then go into the small business market.

But in the big business market, it is unlikely that we are going to be a meaningful competitor any time soon.

Senator LAUTENBERG. So that is a good marketplace for Verizon and the others?

Mr. ROBERTS. Yes.

Senator LAUTENBERG. And that is without any regulation interfering, is it not?

Mr. ROBERTS. Yes.

Senator LAUTENBERG. Is that so for you, Mr. Seidenberg, for Verizon?

Mr. SEIDENBERG. That is true, sir. But may I just add something to this?

Senator LAUTENBERG. Sure.

Mr. SEIDENBERG. Because I think, if I understand the premise of the question, is that we have no natural platform to build local facilities in Atlanta. We have a network that we operate in New Jersey, for example, and other places. Our first choice is to upgrade that network to the next generation of service, while others are coming in and overbuilding us. So our focus in the local area has always been to upgrade what we have.

I think the same thing applies to any cable company who would choose to get into the business market. They first have to upgrade their networks to provide those services, and then as a future service they will do that.

We have plenty of competitors in our market for local services—wireless, cable, and all the little companies that do this. We have chosen not to go out of our wireline franchise to build, overbuild facilities, because new technologies like wireless and IP will supersede those technologies soon enough.

Senator LAUTENBERG. So that that marketplace can be thrown wide open? You do not much care about it in terms of—let me not exaggerate what you have said. But what happens is the pressure that comes as I see it is that there is little opportunity for others to break into the local marketplace, and part of that has to do with fee structure.

I do not want regulation on fees, but I wonder, where does the consumer right get protected here? Should that be regulated? Should there be some regulation that guarantees the consumer that their service is reliable and efficient and reasonably costed?

Mr. ROBERTS. If I might take a shot at that, I think this is where the regulatory parity is a little too simplistic to be the right solution, because you are pointing out that there are parts of the market where there is not enough competition, where in other parts of the market there may be more healthy competition.

So the model of saying, I believe, facilities-based competition is the sustainable competitive model. Let us promote policies that are encouraging people to make that investment. I think I believe—the last time I will say it, so I am not a broken record—I think VoIP presents that possibility. We do not know yet whether it will materialize that way. And we hope to be a leader in making that happen by making that investment.

Senator LAUTENBERG. Mr. Roberts, when Comcast moved to acquire the AT&T broadband installations you argued that the combined companies would be able to accelerate the delivery of broadband services to the American public. You have had that company or that relationship now 18 months. How successful have you been on delivering that promise?

Mr. ROBERTS. I appreciate that opportunity to answer that question, because I am very proud of the fact in the first 18 months we

have basically rebuilt to 95 percent plus the AT&T systems, which were about 70 percent rebuilt at the time we bought them. They had lost 500,000 customers to our competitors in the year between signing and closing. We got 150,000 of those back.

We were able to—we had set guidance for the company internally and externally of 1.2 million broadbands last year that we would sell and we sold 1.67, call it 1.7, million, substantially more than we had expected, because of the investment, because of the return to localism from a national company to a local company, I believe. Certainly, for an 18-month report card we think it has been the most significant and transforming event in our company's history.

Senator LAUTENBERG. Thanks, Mister—I cannot find the Chairman.

Senator SUNUNU [presiding]. If you just say “Mr. Chairman,” somebody over here will answer.

[Laughter.]

Senator SUNUNU. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

Gentlemen, it is great to see all of you here this morning. I know you have had a healthy discussion about what will give us predictability and investment for the future that will help promulgate even better products and services in the broadband space.

I am curious. We have had, this is I think our third hearing, Mr. Chairman, about this issue and the complexities of moving forward, given the framework of current statute and the development of technology, particularly IP telephony and the advent of many of your business models, let us just say, coalescing or coming together. And I know you are not soothsayers, I know you cannot predict the future, and some of this is still evolving.

But I have a question as it relates to where we are today. We have a current Telecom Act and an FCC that tries to interpret that, obviously at times stretches in its challenge of information services in defining it, and obviously we all end up in litigation and complex outcomes to what we think would be a clearer solution if the Act was changed and defined in certain ways. And we have a moratorium proposed now on Voice-Over-IP.

So I just want to understand where you are in looking at this context, of whether the moratorium process will get us to that point of predictability and certainty in investment, or whether you think that in fact the Act has to be changed in some ways so that we can get that predictability and certainty that you have been talking about today.

So whoever wants to start with that.

Mr. SEIDENBERG. Brian volunteers that I go first.

Senator CANTWELL. That easy question.

Mr. SEIDENBERG. This is an easy issue for us, OK. The status quo is a slow death. So I think the moratorium is a reasonable first step. I think some of the other steps that have been taken are small, they are positive, but they do not do anything.

If I could just answer this very quickly from our perspective—

Senator CANTWELL. And tell me—I am assuming a moratorium without a change to the FCC. So in that environment, describe how you see it playing out?

Mr. SEIDENBERG. Well again, let us look at—if we look at, if we were in our board room and we were looking at what our opportunity is and we are looking at this through our lens, which is I think what you really want us to tell you, here is what we see. We see ourselves in a position that we have an open-ended opportunity to develop wireless and we have spent more in wireless than anybody else and, frankly, we are spending it as fast as we can figure out how to spend it.

When it comes to the wireline side of the company, the challenge is that technology continues to eat away at the traditional revenue streams for that business. You are familiar with that. And the only way for us to overcome that inertia is to reinvest our earnings, our cash, and create something different.

So we are not trying to create next year's voice business. We are trying to create a broadband business. The problem we have with the current rules is that there is no—there are no levers that can be pulled to stop the train of all the destructive policies that are going on right now across the industry, short of somebody preempting all of the mischief that goes on, however unintentional it might be, and create an investment-friendly environment so that we can recreate the industry.

If we do not recreate the industry, it just will continue to shrink and we will continue to push our resources someplace else. I think you understand this very well. So as far as we are concerned, there is nothing the FCC could do under its current mandate that will stop the forces of natural technology and investment from disengaging from the wireline business over time.

The history of it is that is exactly what has happened in the last 8 years. Since the Act, the only way any company has made money in the wireline business is by selling itself. That is a 100 percent true statement. So no one is making any money organically. They are making it because they run the business to a certain point and they have to merge with somebody or sell the assets. It is not a good model. It is not what was intended.

Senator CANTWELL. So you are saying do both because—

Mr. SEIDENBERG. I am saying that we have to completely revamp the current regulatory structure, State and Federal, around an investment-friendly, forward-looking model.

Senator CANTWELL. But if you are revamping and putting a moratorium on, those are different things.

Mr. SEIDENBERG. I do not think I would do both. I would change it.

Senator CANTWELL. OK. Mr. Roberts?

Mr. ROBERTS. Well, again I think the details of the telephone business are not something that I would sit here, and as I have said previously, that I am necessarily an expert on their industry. They are in the wireless business and they are the largest competitor to local telephone is wireless, and they are the largest wireless company. So I do think it is a complicated process of how you unravel the 70 years of regulations.

But I think the goal should be competition. And to your point, because no one has a crystal ball, it is all—as a competitor, it is all about innovating. You do not know whether the consumer wants VoIP or not. Nobody knew whether high-speed Internet would work, let alone how much you could sell to recoup your investment. So to do a massive rewrite of the Telecommunications Act I think will create nothing but instability, will destabilize the capital markets, to want you to continue to make long-term decisions where there are short-term uncertainties and medium-term uncertainties as to what those rewrites will be.

I think if there is a problem and somebody wants to target and fix it and that involves reducing some regulations without creating new regulations, then I certainly think that is a better path. In our case, the government has a choice right now about whether to pursue the Brand X case in the Supreme Court, whether or not you want to start regulating the Internet and allowing it to be regulated in a law that was created in 1934. I do not think that is what we should be doing. I think we should be trying to focus from is there competition.

We talked last quarter the phone companies sold more DSL lines than cable companies. That is not because of government. That is because it is a good business opportunity and they are going after it aggressively, as I think they should. I think that model of competition, innovation, and less regulation is where we are at.

Senator CANTWELL. I am not trying to put anybody in a box, but I am just trying to understand because we think of things—well, we should think outside the box here. In the framework of this discussion, I think Mr. Seidenberg was saying, I will take my chances with a new framework, and you are saying, I will take my chances with the moratorium.

Mr. ROBERTS. I would think that what worries me about a complete rewrite is then it gets into many, many other issues and not into let us do a targeted series of things that are clearly either a moratorium or focused on VoIP only, however you want to phrase it.

Senator CANTWELL. Mr. Ford?

Mr. FORD. I think the underlying issue is there are going to be winners and losers any time the rules change. I sense, just personally I sense a strong reluctance on the part of regulators to let any company go out of business. But I think the reality is, until there is a common set of rules where people can fully compete on a facilities-based approach and run some companies, frankly, out of business, you are not going to get to a systemic change that allows competition to renew itself and renew the investment that we are struggling with.

I will give you a great example—go ahead, ma'am.

Senator CANTWELL. No, I was just going to say I think some people think that you might get there with the moratorium, that some people might be run out of business with the moratorium. So if that is your definition of letting the playing field happen.

Mr. FORD. Really, to just speak very frankly, the issue is do we want to take some companies, who have a business model that frankly does not make sense, and continue to take money from the shareholders of people who made a decision to invest in a model

that at the time made sense? We have now got a set of rules that say, well, we have got another company here whose shareholders are going to lose because their managements took them in the wrong direction and we need to take money from these folks and give it to these folks to keep them both alive.

That is fundamentally, that is fundamentally why we have gotten to the point—and we are not a big participant in this battle. That is fundamentally where we have gotten, I think, in terms of the issue around the moratorium today.

Senator CANTWELL. So you are for new rules?

Mr. FORD. I am for new rules, but may I throw in 30 seconds? At great danger, it looks like.

Senator CANTWELL. Oh, no, no.

Mr. FORD. The wireless business is a great example of this. We are spending all of our time—we have taken our business model over the last 5 years from four to one wireline to wireless to three to one wireless to wireline, and we spend all of our time and energy trying to create new applications over the wireless business, because if we come up with a new application or a new service and we spend the capital to put it out, I know, even though it is a very competitive world, I know that I can compete on a heads-up basis.

We spend no time, no time, trying to invest in the wireline business because even if we do we cannot keep it because the regulatory scheme says, well, that disadvantages some other company's shareholders and I am going to take some of that from you and give it to them. So we just do not invest.

Senator CANTWELL. Mr. Betty, new rules or a moratorium?

Mr. BETTY. I would support a moratorium, but I hear a lot of—what they want is to go back to the way it was before 1996. The 1996 Act did do a lot of good. Transit costs are down 75 to 80 percent. Broadband deployment and acceptance would not be there absent the technology changes that helped make the cost to deliver that a lot more effective.

I fear that we are going to reach an environment where the only place innovation can occur is if you go to a cable operator or to a telephone company and try to cut some arrangement to have some chance of creating a business. Absent a way for third party companies to help—what is going to happen to Vonage? I mean, we talk about VoIP and people that are creating this thing. If you do not allow those companies the opportunity to compete, they are going to get squeezed out of the marketplace because the only people who can deliver anything are the cable operators and the telephone companies.

Senator CANTWELL. Mr. Wilson, did you want to cast a vote on this?

Mr. WILSON. Well, I guess I have just a little bit different perspective, being a rural telephone cooperative with 2.33 subscribers per square mile. I guess I will go back and kind of address your question about where we think things are going and about investment and getting there.

Senator CANTWELL. Particularly, do you think the path ought to be through a moratorium or through new rules?

Mr. WILSON. Probably a moratorium. We need a stable environment of investment recovery so that we can deploy these new tech-



nologies. I think it is imperative to our rural areas to move toward the IP broadband world, to create opportunity for our rural subscribers.

Senator CANTWELL. Thank you, Mr. Chairman. I know that took longer probably than my allowed time.

Senator SUNUNU. Fortunately, there is no one here to complain about it.

I have just a couple of additional questions, although I do want to point out that, Mr. Ford, I think you are the only panelist that has advocated for a regulatory framework that allows competitors to run other competitors out of business, although in a level playing field. There is something very American about that. I am not criticizing.

Mr. FORD. I could win or lose.

Senator SUNUNU. I am not criticizing. Just it is a bold choice of words for a panelist, at least in this committee.

Mr. Ford, I wanted to ask you a little bit about universal service. You referred to this, I think, in one of your other answers, but I just wanted you to clarify a little bit about any proposed changes or changes that you might recommend or advocate regarding collection methodology or distribution methodology.

Mr. FORD. Collection methodology, we would literally fall into all of the discussions about bill-and-keep, numbers, revenues, connections. I do not have an elegant statement on that, so I—

Senator SUNUNU. You do not have a particular—

Mr. FORD. I do not have a particular preference on revenue source. My comment was aimed at the distribution of the funds. I think if you look at the joint State-Federal board issues that were recently—well, at least the talk about the meetings that they held—one of the key issues is, well, should universal service or high cost subsidies, maybe more broadly speaking, be available to the primary wireline, the second wireline into the home, the third wireline access point into the home, the first wireless business to apply for funds in that State, the second wireless business, the third, the fourth?

The issue that we have right now, to the great advantage, frankly, of rural telephone company providers like ourselves, is you pay it all, which puts more pressure on the fund. And, keeping with my theme of you ought to let the market sort this out, I am just wanting to point out that it does not have to be that way, and we as one rural telephone provider would not jump up and down and say you have got to make it available to the primary line, which goes back to the politics of the 1930s and everybody needs to have a phone, a chicken in the pot and a phone in the home.

So we want to incent companies like the one my grandfather started, where he dug poles and my mother was an operator, to go out into rural areas and build networks where no one would ever be able to pay for them. So I understand that and appreciate it and would support it.

But do you need it for the second line, the third line? Every wireless provider? Or do you need the customer to say, I want a lifeline connection and I will choose whether it is the wireline provider or the wireless provider? I think you would be able to take an enormous amount of pressure off the subsidy pool.

Senator SUNUNU. Should that valuable subsidy be provided to the provider or to the customer?

Mr. FORD. You are going to effect the same means. I am not versed in whatever is going through your mind right now on the split out of that, and so I am not really sure.

Senator SUNUNU. I would hope that your answer to any question is not predicated on what I am thinking.

Mr. FORD. I think I have established that.

I am not sure.

Senator SUNUNU. Mr. Wilson, in your comments regarding universal service I think you were pretty clear, although in talking about expanding the base you talked about including information providers. It was not clear to me exactly who you were referring to and who that might cover.

Mr. WILSON. Well, Senator, I do not necessarily have the definition with me of what all we included in that. I always look at the information provided by the NTCA where we think the base should be expanded to all providers of telecommunications services. I do not guess I could sit here and tell you at the moment what all we included in information services. I do not have it available to me.

Senator SUNUNU. You talked about instant messaging or e-mail services being telecommunications service. So would those service providers, IP service providers, be covered? You would have them pay universal service rates?

Mr. WILSON. Yes, sir, I think they could fit that definition.

Senator SUNUNU. How big is your company?

Mr. WILSON. We have 7,700 access lines.

Senator SUNUNU. What is your revenue base?

Mr. WILSON. Our revenue base is about \$16 million a year.

Senator SUNUNU. How much of that comes from universal service payments?

Mr. WILSON. About 60 percent of it.

Senator SUNUNU. 60 percent?

Mr. WILSON. Yes, sir.

Senator SUNUNU. And how much of it—how much of the balance comes from, or how much of the total revenue base comes from access charges from terminating calls from other providers?

Mr. WILSON. I do not have that off the top of my head. I know about 9 percent of our total revenues come from local and the remainder of our revenues come off State and Federal USF and access revenues, State and Federal access revenues.

Senator SUNUNU. Thank you. Not what I would have guessed.

Mr. Roberts, what do you expect the per-customer costs for adding VoIP to be?

Mr. ROBERTS. That is a great question that I do not know that I know the answer to that. We are hoping to get it 3 to \$400 a home, where you put in the technology. Hopefully, as with high-speed Internet, that cost will drop substantially. It has been higher than that in the last couple of years. So we are doing three markets this year, three different States, to be able to thoughtfully know the answer to that question.

I do not think anybody yet has rolled out VoIP that can say, yes, it is a winner, we are going to go. I think that there is a number of cable companies almost universally who have all said: If you

charged around \$40 a month for the product, with that type of investment you ought to be able to make a return.

Senator SUNUNU. Mr. Seidenberg, what are your per-customer add costs for VoIP expected to be?

Mr. SEIDENBERG. That is a good question. I do not really have one number for that, simply because if we install new—let us take the case of installing new fiber into the home and we will offer VoIP services over a greenfield network. Those costs, initial costs, can be anywhere from \$1,000 to \$2,000 depending on if the plant is buried.

Senator SUNUNU. You do not need to install fiber into someone's home to offer them VoIP service, do you?

Mr. SEIDENBERG. No, that is correct. We have to put a packet switch in so we can put VoIP in.

I do not think we have identified the costs that way. Frankly, to be honest with you, even if I did know it directly it is a competitive piece of information, so I am not sure I would disclose it in that fashion anyway.

Senator SUNUNU. I guess that is the witness version of "If I tell you I have to kill you."

To both of you, what do you think they are relative to the installation of a circuit switch, an add for a circuit switch customer? Greater, less? Do you anticipate them to be less?

Mr. ROBERTS. It is our great desire that it is less, because we are not convinced that the circuit switch model is a business that you can long-term get a good return from.

Senator SUNUNU. Do you disagree with that, Mr. Seidenberg?

Mr. SEIDENBERG. No. I would just like to add something to that, though, just to make sure that—I can see you are a techie into this, so just to make sure. In this marketplace, the install cost of the packet switch or the electronics over time might be less than what we spend on the circuit switch, but the cost of acquisition, the marketing and the customer care, is going to be much higher.

So I think when we look at the total cost of acquisition of a customer, it is going to be substantial. I think the issue is that without an opportunity to get, to hold that customer long enough to get a return, it is very hard, it is a very hard thing to do in the long term.

Senator SUNUNU. A final question for all of you. If and when we reopen the 1996 Act and start modifying, change, I have heard a lot of discussion about limiting regulation to establish greater parity between modes, being concerned about taking away regulations that may be associated with universal service. But are any of you advocating a new regulation, a new rule that you would like to see as part of this debate? Left to right, Mr. Seidenberg?

Mr. SEIDENBERG. Your left to right, OK. No. The answer—and I probably misled or maybe Senator Cantwell misheard me. We are focused on fixing what applies to us. If you cannot fix it and you have got to change a bigger piece, so be it. But our first choice would be to correct what we think are the infirmities that exist.

Senator SUNUNU. You are not proposing adding new set of rules or regulations?

Mr. SEIDENBERG. Not that my staff has told me about that I know of, no.

Senator SUNUNU. They are all whispering behind you. I do not know if that is a good sign or not.

Mr. Roberts?

Mr. ROBERTS. No.

Senator SUNUNU. Mr. Ford?

Mr. FORD. No, sir.

Senator SUNUNU. Mr. Betty?

Mr. BETTY. I think we should enforce the existing rules.

Senator SUNUNU. Enforce the existing rules. I am always for, if you have a set of rules, they ought to be enforced. That way you are a little bit more credible as both legislators and regulators.

Mr. Wilson?

Mr. WILSON. No, sir, no new rules.

Senator SUNUNU. Thank you very much. We are adjourned.

[Whereupon, at 11:43 a.m., the Committee was adjourned.]

## A P P E N D I X

CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.  
*Goldthwaite, TX, May 18, 2004*

Hon. JOHN MCCAIN,  
U.S. Senate,  
Washington, DC.

Dear Senator McCain:

On behalf of NTCA and myself, I would like to express my sincere gratitude for the opportunity to participate on the panel in last week's Telecommunication Policy Review. It was an experience I'll never forget.

I would like to follow up on a question you asked regarding the need for a national broadband policy. I believe such a policy is very much needed. Currently, there is no real framework in place to ensure this kind of infrastructure will be universal and interconnected. The telecommunication industry needs direction from Congress if such a ubiquitous network is to ever be built in this Nation. Despite the tremendous progress of small rural carriers in deploying broadband capable infrastructure in their areas, if left entirely to market forces, I contend broadband investment will be piecemeal with many parts of the Nation never having access to a truly broadband network. This would leave many Americans never being able to realize and take advantage of all the potential opportunities and benefits such a network could yield.

I see a national policy directive from Congress that creates a partnership between government and private industry where: (1) standards are established; (2) interoperability issues are addressed for interconnection of all types of broadband technologies; (3) a network with flexible bandwidths and unlimited capacities is the objective; and most important, (4) our policies are developed in a manner to make it future proof.

To encourage players, Congress should create a more stable regulatory environment with incentives such as tax credits for large players and USF recovery for small players. Such a project could potentially pump billions into the economy creating an untold number of new jobs.

The United States should be leading the world in the deployment of broadband, not be number eleventh or twelfth as was alluded by some during your hearing series. This type of network would not only make the country more globally competitive, it would usher forth a new era of untold benefits and opportunities to all Americans now and for future generations to come. I want you to know that NTCA, as well as myself, are at your disposal should you chose to pursue such a course of action.

Sincerely,

DELBERT WILSON,  
Central Texas Telephone Cooperative, Inc.

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